CHAPTER 1

Home Affairs Bureau
Lands Department

Direct land grants to private sports clubs at nil or nominal premium

Audit Commission
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This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

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Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

DIRECT LAND GRANTS TO PRIVATE SPORTS CLUBS AT NIL OR NOMINAL PREMIUM

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Executive Summary

1. The Government has a long history of leasing lands at nil or nominal premium to "private clubs" (now termed "private sports clubs" by the Administration) to develop sports and recreational facilities for use by their members. Such leases for private sports and recreational purposes are commonly called "private recreational leases" (PRLs). As at 31 March 2013, 32 PRLs involving a total site area of some 430 hectares were granted to 27 private sports clubs. Of these 32 PRLs, 23 PRLs had expired in 2011 or 2012. As at 30 September 2013, 7 PRLs had been renewed whereas the remaining 16 PRLs were still under "hold-over" arrangement pending renewal.

2. The Home Affairs Bureau (HAB) is the policy bureau for overseeing PRLs and the Lands Department (Lands D) supports the HAB in administering the PRLs. The Audit Commission (Audit) has recently conducted a review of these 32 PRLs granted at nil or nominal premium to the 27 private sports clubs, with focus on how the Government has managed these PRLs. How the lands have been effectively used is also an issue of concern.

Government policy decisions in 1969 and 1979

3. ***Current policy on PRLs.*** The existing Government policy on PRLs is largely based on principles endorsed by the Executive Council (ExCo) over 30 years ago in 1979. No major policy revisions had since been made, except with the "greater access requirement" endorsed by ExCo in July 2011 (see para. 9 below). The PRL policy was primarily established based on the recommendations of two Review Reports, one issued in 1968 and another in 1979. The two Review Reports were endorsed by ExCo in 1969 and 1979, including the adoption of the "Special Conditions for Recreation Club Grants" as attached to the 1979 Report (1979 Special Conditions) (paras. 2.2 to 2.6).

4. ***The need to monitor the use of the PRL sites.*** The 1968 Report and 1979 Report had recommended that the recreational purpose for which the PRL was granted should be defined in the Special Conditions of the lease and new PRLs should strictly prohibit the use of land for non-recreational purposes other than as provided for under the Special Conditions. If any existing club was found using land for non-recreational purposes other than as provided for under the Special Conditions, the club should be required either to comply with the lease conditions or, if a lease modification was acceptable to the Government, to pay a premium for that portion of land involved or, be required to give up the land in question free. Audit however found that the 1969 and 1979 ExCo policy decisions on the need to clearly define the permitted recreational purpose in the PRLs had not been adequately pursued for implementation (paras. 2.8 and 2.9).

5. In the absence of a clearly-defined permitted use of the PRL sites, coupled with the absence of any planning standards laid down within the Government on how the PRL site was to be apportioned for use among the various recreational, social and ancillary facilities, Audit has found that today, 16 of the 32 PRLs are granted to the private sports clubs for use as a "Recreation Club" or a "Sports and Recreation Club" and 14 of the 32 PRLs are permitted to use the PRL sites for such other purposes as defined in the clubs' Memoranda and Articles of Association. As a result, the clubs can operate a very wide range of facilities, sports and non-sports, on the PRL sites. Such non-sports facilities include restaurants, bars, mahjong rooms, massage/sauna rooms, foot reflexology rooms, and barber shops. The clubs are enjoying much freedom in the use of the Government land granted to them at nil or nominal premium. Whereas many of the clubs were providing various types of sports and non-sports services on the PRL sites, Audit found that at least two clubs were not making effective use of the PRL sites (paras. 2.9, 2.10 and 2.12).

6. ***Granting of a new PRL in 1999.*** In September 1999, a 21-year PRL, involving a site area of some 170 hectares in the North District of the New Territories, was granted at a premium of $1,000 to one Club by the Lands D under delegated authority from ExCo. The PRL was granted to replace mainly an old lease of a site area of 159 hectares granted to the Club since 1930 and a site with an area of 11 hectares held by the Club since 1990 under a short term tenancy (STT).

Although the Lands D had obtained policy support from the then Broadcasting, Culture and Sport Bureau (now the HAB), Audit noted that the granting of the PRL to the Club was peculiar in various aspects. For example, the PRL has covered a large site area of some 170 hectares and has subsumed, as part and parcel of the PRL, the STT which was previously let out to the Club at market rental. Besides, the PRL had deviated from the 1979 Special Conditions (see para. 3 above) that govern all PRLs granted or renewed after 1979 in allowing the Club to use the PRL site for residential purposes for club members and their families, reciprocal members, overseas guests, and members of competing sports teams. Audit considers that in future cases of sufficient importance, the Administration should seek the advice of ExCo before the PRL is granted (paras. 2.19 to 2.24).

7. ***The urgent need for a comprehensive review of the PRL policy.*** In January 1969, when tabling the 1968 Report, the Administration informed ExCo that the Government would wish to conduct similar reviews of the PRL policy at suitable intervals in future as the public interest required. However, the existing Government policy on PRLs is largely based on principles laid down in 1979 and there has not been any comprehensive PRL policy review since 1979. As a result, most of the PRLs which expired in 2011 or 2012 were/would be renewed primarily based on the 1979 policy decisions (paras. 2.13, 2.28 and 2.29).

Implementation of the "opening-up" requirement

8. In accordance with the 1969 and 1979 policy decisions, almost all PRLs contain a requirement for the private sports clubs to permit the use of their grounds and facilities by eligible outside bodies for 3 sessions of 3 hours each per week when required by the competent authorities (i.e. Directors/Heads of a few designated bureaux/departments (B/Ds)). Audit has however found that for the past 13 years, the competent authorities did not play an active role in promoting the availability of the clubs' facilities and had not received any enquiries or requests from eligible outside bodies for using such facilities. Not until mid-2012 did the HAB begin to publicise that eligible outside bodies might contact the clubs direct to book their sports and recreational facilities during designated time slots for sporting use (paras. 1.11, 3.4, 3.15 and 3.16).

9. In July 2011, ExCo endorsed that PRLs should be renewed in accordance with the 1979 policy decisions, subject to the clubs having met various renewal criteria, including the modified lease conditions on the provision of greater access to "Outside Bodies" (which include, among others, schools, certain subvented non-governmental organisations and national sports associations). According to the more recent Special Conditions, the clubs are required to submit for the HAB's approval their "opening-up" schemes and to submit quarterly reports on usage under the approved schemes. Without awaiting the renewal of the PRLs, in June 2013, the HAB urged the clubs to start opening up their sports facilities to Outside Bodies in line with the greater access requirement. As at 30 September 2013, the HAB had approved the schemes for 20 PRLs. A "snap-shot" of the actual usage, based on the clubs' quarterly reports, shows that in most cases, the actual usage was far below the committed "opening-up" hours, indicating that the HAB needs to continue stepping up its efforts to urge the clubs to promote the availability of their sports facilities (paras. 3.4, 3.8, 3.11 and 3.18 to 3.22).

Monitoring of compliance with lease conditions

10. ***Inspections to ensure that the PRL site is used for intended purposes.*** PRLs were granted to private sports clubs to develop and operate sports and recreational activities. The clubs should not use the PRL sites for any other purposes (e.g. commercial activities or subletting). However, no evidence is available showing that the Lands D had itself conducted regular site inspections to ensure that the land is being used for the intended purposes. In particular, Audit noted that the scope and responsibility for monitoring permitted use and conducting site inspections have not been clearly defined between the HAB and the Lands D (paras. 4.7, 4.8 and 4.10).

11. ***Common breaches identified by Lands D.*** During the current round of renewal exercise, the Lands D identified common breaches of the Conditions of Grant in its site inspections. Such common breaches included unauthorised building works, slopes not properly maintained, encroachment on Government land and breaches of user restriction. Although breaches for some of the Conditions of Grant are regulated by other enforcement authorities (e.g. unauthorised building works by the Buildings Department), the Lands D needs to follow up such outstanding cases during the PRL renewal exercises by liaising with relevant enforcement authorities to make sure that they have been settled before the PRLs are renewed (paras. 4.7, 4.11 and 4.12).

12. ***Suspected non-compliances noted.*** Without regular site inspections of the land under the PRLs by either the HAB or the Lands D, the Government had not been able to timely detect non-compliance with the Conditions of Grant. Audit noted cases of such suspected non-compliances in this review. Such cases included suspected commercial activities/subletting on PRL sites (which are not allowed under the Conditions of Grant), such as operation of restaurants, a bar, sports shops, massage rooms and beauty salon by profit-making third parties (para. 4.13).

Current round of PRL renewals

13. ***A more coordinated approach is called for when assessing the need for public purposes.*** When considering whether a particular PRL should be renewed, the Lands D had been taking a coordinating role and would ask the relevant government departments whether "the site is required for a public purpose". In most cases, the government departments would reply individually that they had no comment/objection. Audit considers that such an approach to assess whether the PRL site would be required for a public purpose is too fragmented. Given that the Government is committed to increasing the supply of land in the short, medium and long terms, Audit considers that a more coordinated approach is required in future and the HAB needs to work collaboratively with the Development Bureau, the Lands D and other relevant government departments to assess whether any of the PRLs due for renewal should be renewed (para. 5.4(a)).

Audit recommendations

14. **Audit recommendations are made in PART 5 of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Secretary for Home Affairs should, in collaboration with the Secretary for Development and the Director of Lands, as well as other relevant B/Ds, work on the forthcoming PRL policy review without delay, taking into account the needs and demands of different stakeholders and the audit observations and recommendations in this Audit Report, so that new policy directions on PRLs would be in place before the expiration of a number of PRLs (para. 5.8).**

15. **More specifically, Audit has *recommended* that the Secretary for Home Affairs and, where appropriate, the Director of Lands should, in collaboration with other relevant B/Ds:**

Government policy decisions in 1969 and 1979

(a) **examine individual PRLs on a case-by-case basis and consider how they should be revised/refined in the light of changes in circumstances, taking into account the key principles set in the forthcoming policy review on PRLs (para. 5.9(a));**

(b) **set up an effective mechanism to monitor the use of PRL sites (para. 5.9(b));**

(c) **draw up planning standards to help assess how PRL sites should in future be reasonably apportioned among sports and non-sports facilities to meet the purpose of the PRLs (para. 5.9(c));**

(d) **in future cases of sufficient importance, seek the advice of ExCo before granting the PRL (para. 5.9(f));**

Implementation of the "opening-up" requirement

(e) **keep the approved "opening-up" schemes for individual private sports clubs under regular review and monitor the scheme usage by Outside Bodies (para. 5.9(g));**

Monitoring of compliance with lease conditions

(f) **follow up the irregularities/suspected non-compliances with Conditions of Grant in the case studies reported in this Audit Report (para. 5.9(m));**

(g) **conduct checks on the suspected commercial/subletting cases identified in this Audit Report, with scope expanded where appropriate, to other private sports clubs holding PRLs, and determine the full extent and propriety of such practices (para. 5.9(n)); and**

Current round of PRL renewals

(h) **work collaboratively with the Secretary for Development and Heads of other relevant government departments to assess whether any of the PRLs due for renewal should be renewed (para. 5.9(p)).**

Response from the Administration

16. The Administration generally accepts the audit recommendations. The Secretary for Home Affairs has pointed out that the HAB is responsible for the policy on the grant and renewal of PRLs, in the context of its overall responsibility for sports development policy. There are other issues that have a bearing on PRLs, but which are beyond the purview of the HAB, such as the wider land use policy considerations that govern the award of PRLs. The Secretary for Development and the Director of Lands have said that the Development Bureau and the Lands D stand ready to contribute to the HAB's forthcoming PRL policy review and the Lands D will support the HAB in implementing the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 The Government has a long history of leasing lands at nil or nominal premium ($1,000) to "private clubs" (now termed "private sports clubs" by the Administration), non-governmental organisations (NGOs) and other organisations to develop sports and recreational facilities for use by their members. Such leases for private sports and recreational purposes are commonly called "private recreational leases" (PRLs — Note 1). PRL is one type of private treaty grants (PTGs) for special purposes. It is non-renewable and, upon its expiry, the Government has the sole discretion of renewing it or not. Some of the existing PRLs in force have been renewed for a number of times since they were first granted. In July 1997, the Executive Council (ExCo) decided that the term of leases for recreational purposes, if extended at the Government's sole discretion upon expiry of the leases, may not be extended for a term exceeding 15 years.

1.3 As at 31 March 2013, there were 69 PRLs (Note 2). The Home Affairs Bureau (HAB — Note 3) has divided these 69 PRLs into five categories, namely:

Note 1: *Apart from PRLs, the Government has also granted land leases, such as short term tenancies, to other clubs and organisations for sports and recreational purposes.*

Note 2: *Although most of the PRLs are granted to the private sports clubs, NGOs and other organisations at nil or nominal premium, they are subject to Government rent at 3% of the rateable value a year. Taking the 32 PRLs granted to private sports clubs in paragraph 1.3(a) for example, based on the HAB records, Government rents payable, as assessed by the Rating and Valuation Department, amounted to some $20 million a year.*

Note 3: *In April 1998, the HAB took over the policy responsibility for culture and sports from the then Broadcasting, Culture and Sport Bureau.*

(a) 32 PRLs (PRL 1 to PRL 32) granted to 27 private sports clubs (namely Club 1 to Club 27 — Appendix A), with four of them holding two or more PRLs each;

(b) 15 PRLs to four uniformed groups, with three of them holding two or more PRLs each;

(c) 15 PRLs to 11 welfare organisations, with three of them holding two or more PRLs each;

(d) 5 PRLs to two national sports associations (NSAs) and three district sports associations; and

(e) 2 PRLs to two civil servants' associations.

1.4 The HAB is the Government's policy bureau for overseeing PRLs. In particular, it is responsible for policy issues on the grant and renewal of PRLs. However, with regard to matters involving land administration and enforcement, the HAB indicates that it has no executive role. The Lands Department (Lands D), as the Government land agent, supports the HAB in administering the PRLs. It takes advice from the HAB and, where appropriate or necessary, seeks the views of other relevant bureaux/departments (B/Ds).

Private recreational leases to private sports clubs

1.5 By granting PRLs at nil or nominal premium to private sports clubs and other organisations, the Administration is in effect providing them with financial subsidies in terms of premium foregone for the whole term of the lease.

1.6 Apart from being lessees of PRLs, most of the NGOs listed in paragraph 1.3(b) to (d) also receive recurrent subventions from the Government. Therefore, they are subject to the Government's regulation as subvented organisations, which may include entering into funding and service agreements with sponsoring B/Ds

which provide them with subventions (Note 4). Apart from the need to observe the Government's subvention rules, these subvented NGOs are accountable for their activities, including activities on the land under the PRLs, to the sponsoring B/Ds. They generally charge nil or low entry fees for membership and allow easy accessibility to their facilities.

1.7 Unlike the subvented NGOs, the 27 private sports clubs in paragraph 1.3(a) operate largely on their own. They are however obliged to observe the terms and conditions of the PRLs (Conditions of Grant — Note 5). As compared with the subvented organisations, the Government's control over the 27 private sports clubs is weaker. At the time when these 32 PRLs were first granted to the private sports clubs (with some cases in the form of Crown leases dating back to 100 years ago), there was an acute shortage of public sports facilities, and sports facilities built by these clubs for use by their members could help alleviate the shortage. However, over the years, circumstances have changed. In recent decades, there has been a substantial increase in the number of public sports facilities and sports facilities in private housing estates.

The role of private sports clubs today

1.8 In July 2011, the HAB informed the Legislative Council (LegCo) Panel on Home Affairs (Panel) that private sports clubs on land held under PRLs had made contribution to the promotion of sports development and the provision of recreational and sports facilities in Hong Kong, and they could continue to play an important role in this respect. The HAB indicated that:

(a) the private sports clubs had trained up a considerable number of elite athletes and squads to represent Hong Kong in local and international competitions at various levels, and had provided training and competition venues to local leagues of different sports;

Note 4: *Examples of such sponsoring B/Ds include the Social Welfare Department and the Leisure and Cultural Services Department.*

Note 5: *Conditions of Grant for PRLs, in common with the Conditions of Grant/Exchange/Sale for other types of land, comprise the General Conditions and the Special Conditions.*

(b) a number of private sports clubs had high quality sports facilities suitable for hosting major international sports events and they had worked with NSAs and the Government in organising activities to promote sport;

(c) it was clearly stated in PRLs that the lessees were required to open up their facilities to outside bodies, and some outside bodies had all along been using such facilities. A great number of the private sports clubs had allowed outside bodies to use their facilities for different purposes, including practices of school teams, training of Hong Kong sports teams and uniformed groups, as well as activities organised by social and welfare organisations; and

(d) such clubs had become well established after many years of development. They employed a total of over 6,200 full-time staff and their total operating expenditure was around $5.7 billion, representing a strong commitment of the clubs in operating their venues. They had provided high quality sports and recreational facilities which helped to attract overseas executives and professionals to work in Hong Kong and maintain Hong Kong's status as an international metropolis. The HAB believed that the clubs had played a role in the long-term development of sport in Hong Kong.

1.9 In June 2013, the HAB further informed the LegCo Panel that:

(a) many of the private sports clubs had invested in building facilities and running training programmes for members and non-members alike, without which many sports in Hong Kong would not have had the chance to develop;

(b) popular annual sporting events that were enjoyed by various sectors of the community, such as the Rugby 7s (in its initial years), the Hong Kong Cricket Sixes, the Hong Kong Golf Open Championship and the Hong Kong Soccer 7s, simply would not exist without the contribution of the host clubs and their members towards the provision of venues and event organisation;

(c) regular competitions run by many of the NSAs in sports such as tennis, squash, lawn bowls and hockey relied heavily upon the facilities provided by the clubs; and

(d) the sports and recreational facilities operated by the private sports clubs helped to significantly relieve the pressure on public facilities.

1.10 The 32 PRLs granted to 27 private sports clubs have the following characteristics:

- The 32 PRLs involve a total site area of some 430 hectares. These PRLs are located in various parts of the urban and rural areas of Hong Kong, with some located in the more densely populated areas.

- Some of these private sports clubs had been granted the PRLs as early as the pre-war days on an annual basis. From 1951 to 1978, these clubs were granted 10-year PRLs to enable them to develop their facilities more fully. The oldest clubs were founded in 1851, 1889 and 1910. Since 1979, PRLs to private sports clubs have generally been renewed on 15-year term.

- The types of sports facilities provided by the private sports clubs on land under PRLs are diverse, including tennis courts, basketball courts, swimming pools, squash courts, table-tennis tables, gymnasium and fitness rooms. Some of the clubs also offer sports facilities which are not commonly available in government venues, such as cricket pitches, lawn bowls greens, tenpin bowling, sailing facilities and golf courses.

- A few private sports clubs have quite a large number of members (such as Club 13 with some 50,000 members) and/or charge fees from $0 to $50,000 for entrance as ordinary members. Some however may have been perceived as "prestigious" clubs and charge high entrance fees for membership. A few clubs were initially set up to provide sports and recreational facilities for residents of a particular area.

1.11 The Conditions of Grant have stipulated that the private sports clubs must open up their grounds and facilities on the land under the PRLs to "Outside Bodies" (Note 6) under the purview of the competent authorities (CAs — Note 7). Such use generally does not apply to individual members of the general public.

More recent development in PRL renewal

1.12 Of the 69 PRLs (see para. 1.3), 51 PRLs, including 23 PRLs to private sports clubs, had expired in 2011 or 2012. As at the end of September 2013, the position of the 51 PRLs which expired in 2011 and 2012 was as follows:

Position as at the end of September 2013	**PRLs of**		**Total**
	Private sports clubs (Para. 1.3(a))	**Other organisations (Para. 1.3 (b) to (e))**	
	(No.)	**(No.)**	**(No.)**
Already renewed	7	4	11
Still under "hold-over" arrangement	16	24	40
Total	23	28	51

Note 6: *Such "Outside Bodies" include schools, NGOs receiving subvention from the Social Welfare Department, uniformed groups and youth organisations receiving subvention from the HAB, and NSAs (see para. 3.4).*

Note 7: *CAs are Directors/Heads of designated B/Ds as stipulated in the PRLs. They would refer requests from Outside Bodies (see Note 6) under their charge to the private sports clubs for use of the clubs' facilities (see details of CAs in para. 3.4).*

1.13 In the recent three years, because of the expiration of many PRLs, the subject of PRL has been under deliberations by LegCo on a number of occasions, with the issue very often raised for discussion by the HAB. In December 2011, the HAB informed LegCo that it was planning to renew all expired PRLs for 15 years on the basis that the lease conditions would be modified to require the lessees to grant greater access of their sports facilities to Outside Bodies. In May 2013, the HAB further informed LegCo that it had advised the lessees (including the private sports clubs) that the Administration would conduct a comprehensive review of the PRL policy and that the lessees should not assume that their PRLs would be further renewed or be renewed under the same terms and conditions upon expiry of the renewed lease.

Audit in 1990 and follow-up action by the Administration

1.14 In 1990, the Audit Commission (Audit) conducted an audit review of PRLs. Audit found that although the private sports clubs were required under the Conditions of Grant to open up their facilities to eligible outside bodies since the early 1980s, the arrangement was ineffective as the latter had made little use of the clubs' facilities, and the CAs had played a passive role in promoting the availability of the facilities.

1.15 In the follow-up of the 1990 audit, the Public Accounts Committee of LegCo was informed by the Administration in 1992 that:

(a) a 5-year strategic plan had been formulated to encourage increased use of clubs on PRLs and to seek better utilisation of the clubs' sports facilities to promote sports at the district level; and

(b) the Government would monitor the need to review the Conditions of Grant in the PRLs.

In the few years subsequent to the 1990 audit, the Administration made efforts to promote and maximise usage of the clubs' facilities, including dissemination via the CAs to schools, youth clubs and other bona fide organisations a list of clubs operating on PRLs together with details of their available facilities, level of charges and names of acceptable insurance companies. However, the promotional efforts were not very effective as usage by eligible outside bodies as reported by lessees, except for a few clubs, for the period April 1994 to March 1996 was generally not high.

1.16 Some 20 years since the 1990 audit, the Office of The Ombudsman conducted an investigation and reported in September 2012, among others, that "In the absence of Government publicity, it is no wonder that no eligible *(outside)* body had ever applied to the CAs for using the sports facilities of the sports clubs".

Audit review

1.17 In this review, Audit examined the 32 PRLs granted to 27 private sports clubs (see para. 1.3(a)). Focus is placed on how the Government has managed these PRLs to ensure that the objectives of granting the PRLs are met. Given that these PRLs have been granted to the private sports clubs at nil or nominal premium, how the lands have been effectively used is an issue of concern.

1.18 Audit started the review in early March 2013 (at which time all 23 of 32 PRLs to private sports clubs that had expired in 2011 or 2012 were still under "hold-over" arrangement pending renewal). In this review, Audit had examined records of the HAB and the Lands D relating to all 32 PRLs granted to private sports clubs, with more detailed examination on 15 PRLs granted to 12 private sports clubs. Although Audit has no right of direct access to the clubs' records, Audit was able to seek clarifications/additional information from the clubs through the support and assistance of the HAB and the Lands D, and also had the opportunity of conducting site visits to four of these 12 private sports clubs to gain a better understanding of their activities on the land under the PRLs.

1.19 This Audit Report covers the following areas:

(a) Government policy decisions in 1969 and 1979 (PART 2);

(b) implementation of the "opening-up" requirement (PART 3);

(c) monitoring of compliance with lease conditions (PART 4); and

(d) way forward (PART 5).

Although this audit only covers the Government's management of the 32 PRLs granted to private sports clubs, it is possible that the audit findings and recommendations are similarly applicable to the other 37 PRLs (see para. 1.3(b) to (e)). Therefore, Audit has suggested that the HAB should conduct a similar review of the Government's management of the other 37 PRLs in its follow-up of this Audit Report.

Acknowledgement

1.20 Audit would like to acknowledge with gratitude the full cooperation of the staff of the HAB and the Lands D during the course of the audit review. They have been very supportive and made great efforts to clarify the audit issues raised, particularly the case studies, with the private sports clubs where they considered necessary. Audit would also like to thank the clubs for their cooperation during Audit's site visits.

PART 2: GOVERNMENT POLICY DECISIONS IN 1969 AND 1979

2.1 This PART examines the implementation of the Government policy decisions on PRLs made in 1969 and 1979.

Current policy on private recreational leases

2.2 The existing Government policy on PRLs is largely based on principles endorsed by ExCo over 30 years ago in 1979. No major policy revisions had since been made, except with the "greater access requirement" endorsed by ExCo in July 2011 (see para. 2.6). The PRL policy was primarily established based on the recommendations of two Review Reports, one issued in 1968 and another in 1979. The 1968 Report and the 1979 Report were endorsed by ExCo in 1969 and 1979 respectively.

Policy decisions in 1969 and 1979

2.3 ***Policy decisions in 1969.*** Because a number of PRLs would expire in 1971 or 1972, the then Governor of Hong Kong set up an Advisory Committee to review the PRL policy in 1965. The Advisory Committee issued a Review Report in 1968 (the 1968 Report). The 1968 Report made the following key recommendations, which were endorsed by ExCo in January 1969:

(a) ***Length of leases.*** The renewal of existing leases should be for further terms of 10 or 21 years depending on whether or not substantial new expenditure was required to be amortised over a period longer than 10 years. These leases did not contain a right of renewal.

(b) ***Restrictions on use of the ground.*** The recreational purpose for which the grant was made should be defined in the Conditions of Grant (Note), which should also prevent the lessee from using the land for any other purpose. The relevant conditions should not, however, exclude the use of the property for all reasonable social functions and other recreational uses ancillary to the main objects.

(c) ***Use by outside bodies.*** The lessee should make the land available for use by other parties as specified by the appropriate CA, e.g. activities of schools and youth clubs.

(d) ***Applications for new PRLs.*** Applications for new PRLs, particularly in areas where land was in short supply, should only be considered from non-profit-making bodies having a wide representation or which proposed to provide recreation of a sort not already available in Hong Kong.

Note: *The Advisory Committee pointed out that the then PRLs, confining the use of the ground to purposes defined in the Memorandum and Articles of Association (M&As) of the lessees, had certain weaknesses as a means of control, and could have the effect of inducing the clubs to make their M&As so wide as to render control ineffective.*

2.4 The Advisory Committee also recognised that land then available for public use in built-up areas was inadequate, but most of the private clubs (now termed "private sports clubs" — see para. 1.2) then on land under PRLs were situated in the more densely populated areas of the territory, and it was in these areas which had the most pressing need for additional public recreation space. The Advisory Committee considered that whilst these clubs still had a part to play in the sporting life of Hong Kong, they ought to recognise that conditions had changed since they were formed and their leases originally granted. The Government also ought to review the position of these clubs from time to time to ensure that the public interest continued to be served.

2.5 ***Policy decisions in 1979.*** In November 1973, the Council for Recreation and Sport (CRS) was established to advise the Government on the formulation of policies relating to the promotion of recreation and sport. Ten years after the 1968 review, in 1977, because a number of PRLs would again expire (in 1981 or 1982), the CRS appointed a Working Group to again review the PRL policy, including reviewing the policy recommendations of the 1968 Report, and to make recommendations on the renewal of existing PRLs. The Working Group issued its report in January 1979 (the 1979 Report). The recommendations of the 1979 Report followed the basic principles advocated in the 1968 Report, but introduced further criteria for renewal of existing PRLs and granting of new PRLs. The following are the key recommendations which were endorsed by ExCo in May 1979:

Policy for renewal of existing PRLs

(a) All existing PRLs should be renewed subject to the site being compliant with the current zoning plan, not being required for a public purpose and there being no breach of lease conditions.

(b) All existing PRLs should in general be renewed for a term of 15 years.

(c) Renewal would be subject to the club adopting a non-discriminatory membership policy for the admission of new members in respect of any form of discrimination by race, religion, or sex or in the order in which applicants were given membership.

(d) If any existing club was found to be using land for non-recreational purposes *(i.e. other than as provided for under the Special Conditions of Grant)*, the club should be told to stop doing so immediately and to put the matter right by converting any buildings or other facilities to recreational use. If, however, the buildings and facilities involved were so substantial as to make it unreasonable or impracticable to demand their demolition (e.g. in the case of a restaurant), or when the club objected to the reversion of any buildings or other facilities back to its original use, then the Government would have to decide whether the PRL should be terminated or whether the club should be required to pay a premium for that portion of land involved and the matter could be dealt with by means of a waiver.

Basic principles in considering applications for new PRLs

(e) Applications for new grants of land for recreational purposes in the urban areas, including those in the New Territories, should be for a term of 21 years or the usual New Territories lease terms *(i.e. up to 1997)*. Such applications should be considered only from non-profit-making bodies which incorporated a non-discriminatory membership policy and had a wide representation with low charges or which provided facilities for recreation of a sort not already available in Hong Kong (para. 2.3(d) is also relevant).

(To be continued)

(Cont'd)

(f) Applications for new PRLs in "outside urban areas" of the New Territories should be considered on their individual merits subject to the availability of land.

Special conditions of PRLs

(g) All PRLs in future should be subject to the "Special Conditions for Recreation Club Grants" as attached to the 1979 Report (1979 Special Conditions — Note), which included, among others, the following Special Conditions:

(i) a requirement for the lessee to permit the use of its grounds and facilities by outside bodies (such as schools or welfare organisations — see para. 3.4) for a maximum of 3 sessions of 3 hours each per week (except weekends and public holidays); and

(ii) a requirement in new PRLs for the lessee to provide for approval of the land authority the layout plans and general development plans of any proposed development/redevelopment on the PRLs.

Note: In accepting the adoption of the 1979 Special Conditions in all future PRLs, the Administration informed ExCo that the Special Conditions might require amendments in future to comply with changes in policy and legislation.

More recent policy decision

2.6 Because most of the PRLs would expire in 2011 or 2012 (see para. 1.12), in July 2011, ExCo endorsed that, when renewing the existing PRLs in accordance with the 1979 policy decisions, the PRL lessees (including the private sports clubs) should be advised that:

(a) they were required to comply with modified lease conditions relating to the granting of greater access to their sports facilities by Outside Bodies; and

(b) there should be no expectation that any further extension of their leases would be granted upon expiry of the extended term, or that any further extension would be granted at nominal premium or that any further extension would be granted on the same terms and conditions as contained in the leases as so extended.

Audit findings

2.7 The following audit issues are examined in this PART:

(a) the need to monitor the use of the PRL sites (paras. 2.8 to 2.12);

(b) the need to review the private sports clubs' positions from time to time (paras. 2.13 to 2.17);

(c) granting of a new PRL in 1999 (paras. 2.18 to 2.24); and

(d) the urgent need for a comprehensive review of the PRL policy (paras. 2.25 to 2.30).

The need to monitor the use of the PRL sites

2.8 The 1968 Report and 1979 Report recommended, as endorsed by ExCo, that:

(a) the lessee should only use the PRL site for the recreational purpose for which it was granted. The recreational purpose for which the grant was made (e.g. a "Cricket Club") should be defined in the Special Conditions, as shown below:

> "The grantee shall not use or permit or suffer the use of the lot or any part thereof or any building or part of any building thereon, for any purpose other than for a (here insert the recreational purpose for which the grant is made, e.g. a cricket club) including such reasonable social functions and other recreational activities as are ancillary to such use or usually associated therewith and …" *(extracted from the 1979 Special Conditions as endorsed for adoption by ExCo);*

(b) new PRLs should strictly prohibit the use of land for non-recreational purposes other than as provided for under the Special Conditions;

(c) if any existing club was found using land for non-recreational purposes other than as provided for under the Special Conditions:

(i) the club should be required either to comply with lease conditions or, if a lease modification was acceptable to the Government, to pay a premium for that portion of land involved or, be required to give up the land in question free; and

(ii) should any serious breach of lease conditions be discovered, the then Secretary for the Environment with the advice of the CRS would decide if the PRL was to be renewed;

(d) no fixed proportions could or should be laid down in respect of land used for recreational and ancillary purposes because circumstances surrounding the individual clubs varied and depended on the nature of the clubs, their location, membership and other factors; and

(e) the following 1979 Special Conditions which empowered the land authority to govern the development of the clubs on PRL sites, should be adopted in all future PRLs:

(i) "The grantee shall not, except with the prior written consent of the Director of Public Works/Secretary for the New Territories *(i.e. now the Director of Lands)*, at any time erect upon the lot any building or structure or make any extension to any existing building or structure thereon"; and

(ii) "The grantee shall within 6 months from the date of this Agreement submit to the Director of Public Works/Secretary for the New Territories for his approval layout plans and general development plans for the development of the lot ….(collectively referred to as "the Master Plans"). …. Except with the prior written consent of the said Director/Secretary, no amendment, alteration or variation shall be made to the Master Plans." *(applicable to all new PRLs to be granted after 1979)*.

What was found in this audit

2.9 Audit has however found that the 1969 and 1979 policy decisions on the need to clearly define the permitted recreational purpose in the PRLs had not been adequately pursued for implementation, as explained below:

(a) ***Need to define the recreational purpose for which the PRL was to be granted.*** Private treaty grants (PTGs) are normally made for a specific purpose with the land use specified in the Special Conditions. In the case of PRL which is one type of PTGs (see para. 1.2), the 1968 Report and 1979 Report had recommended that the recreational purpose for which the PRL was granted should be defined in the Special Conditions (see paras. 2.3(b) and 2.8(a)). The Advisory Committee also pointed out as early as in its 1968 Report that confining the use of the grounds to purposes defined in the M&As of the clubs had certain weaknesses as a means of control and would render the Government's control ineffective (see Note to para. 2.3(b)). Nonetheless, Audit has found that today, among the 32 PRLs granted to private sports clubs:

(i) instead of having a specific recreational purpose defined in the Special Conditions (such as a "Cricket Club") as endorsed by ExCo in 1979 (see para. 2.8(a)), 16 PRLs are granted to private sports clubs for use as a "Recreation Club", a "Sports and Recreation Club", a "Country Club" or a "Community Centre" (Note 8 and Note 9). The clubs for 9 of these PRLs are further permitted to use the PRL sites for such other purposes as defined in the clubs' M&As; and

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Note 8: *For example, in one PRL, the "User" provision allows the club to use the site "…. for the sporting and recreational purposes as specified in the Memorandum and Articles of Association of the Grantee including such reasonable social functions and other recreational activities as are ancillary to such use or usually associated therewith …".*

Note 9: *On one occasion in November 2002, the Secretary for Home Affairs informed LegCo that sports and recreational purposes could mean purposes in relation to the training of the body and mind of the general public, which included all popular sports activities and relevant facilities.*

(ii) for the remaining 16 PRLs (including four new PRLs granted to three private sports clubs after 1979), whilst they have been granted to the private sports clubs for a specific recreational purpose (e.g. "Yacht Club", "Golf Club" or "Cricket Club"), but in five of them, the clubs are also permitted to use the PRL sites for such other purposes as defined in the clubs' M&As.

Without a clearly-defined permitted purpose for use of these PRL sites and/or permitting the use of the sites for any other purposes as defined in the clubs' M&As, the clubs can operate a very wide range of facilities, sports and non-sports, on the PRL sites (Examples 1 and 2 are cases in point). It appeared that the 1969 and 1979 policy decisions on the need to clearly define the permitted recreational purpose in the PRLs had not been adequately pursued; and

Example 1

1. One club, located at a prime location in the urban areas, was granted a PRL involving a site area of some 2 hectares for use as a "Recreation Club" (Note 1). As at December 2011, the club had some 3,400 members.

2. On the one hand, the club has provided sports facilities which are commonly provided by the Leisure and Cultural Services Department (LCSD), including 15 outdoor tennis courts (Note 2) as the principal sports facilities, and others, such as swimming pools, badminton courts and squash courts. On the other hand, the club also operates many non-sports facilities in the club premises, including:

- a Chinese restaurant (with 300 seats)
- a Western restaurant (with 220 seats)
- a coffee shop (with 240 seats)
- a bar
- 15 mahjong/private rooms
- a barber shop
- massage rooms

Note 1: The PRL was granted to the club "... for a Recreation club including such reasonable social functions and other recreational activities as are ancillary to such use or usually associated therewith and in accordance with Memorandum and Articles of Association of the Grantee".

Note 2: Within a 10-minute walk, 20 outdoor tennis courts provided by the LCSD for public use can be reached.

Source: HAB/Lands D records

Example 2

1. Another club, also located at a prime location in the urban areas, was granted a PRL involving a site area of some 3 hectares for use as a "Football Club" (Note). As at November 2012, the club had over 3,000 members.

2. Similar to Example 1 above, this club has provided a wide range of sports facilities on the PRL site, namely natural/artificial turf pitch, lawn bowls greens, bowling alley, tennis courts, squash courts, fitness centre, etc. On the other hand, the club also operates many non-sports facilities in the club premises, including:

- 8 food and beverage (F&B) outlets, one of which is a restaurant that can accommodate up to 250 persons. These F&B outlets together occupied some 1,800 square metres (m^2) of usable floor area
- 7 function/meeting rooms
- beauty and massage rooms

Note: The PRL was granted to the club for use as "a Football Club and those purposes defined in the Memorandum and Articles of Association of the Grantee, ... including such reasonable social functions and other recreational activities".

Source: HAB/Lands D records

(b) ***Land to be used for social and ancillary facilities should be reasonable.*** As mentioned in paragraphs 2.3(b) and 2.8(a), the private sports clubs should only provide reasonable facilities to meet social functions and other recreational uses ancillary to the main objects. It has transpired that without defining a clearly-defined permitted use for PRLs (see (a) above), coupled with the absence of any planning standards developed by the Administration on how land held under the PRLs should be apportioned for use among the various recreational, social and ancillary facilities, many of the clubs today are providing multifarious types of sports and non-sports facilities on the PRL sites. Sports facilities include tennis

courts, swimming pools, badminton courts and squash courts, whereas non-sports facilities found on the PRL sites include restaurants, bars, mahjong rooms, massage/sauna rooms, foot reflexology rooms, barber shops and private rooms (most of which are generally not found in public sports centres of the LCSD). From an examination of the audited accounts of the private sports clubs granted with PRLs, Audit further found that their revenues generated from operating the non-sports facilities (e.g. from F&B operations) were very often significant.

The Lands D has been empowered to approve developments on PRL sites, including additions and alterations to buildings or structures (see para. 2.8(e)(i) and (ii)). However, because of the absence of a clearly-defined permitted use of the PRL sites in (a) above and the absence of any planning standards laid down within the Government on how the PRL site was to be apportioned for use among the various recreational, social and ancillary facilities in (b) above, it was difficult for the Lands D staff to assess whether the developments on the PRL site had met the Government's intended purpose and whether the apportionment of land for use among various sports and non-sports facilities was reasonable (Note 10). Nonetheless, in September 2013 the Lands D informed Audit that, where considered necessary, the Lands D staff would consult the HAB on the development plans, particularly those which might involve relatively more material changes to existing buildings, and it had done so in more recent cases for development plans received from the PRL lessees.

2.10 Whereas many of the private sports clubs were providing various types of sports and non-sports facilities on the PRL sites, Audit found that at least two clubs were not making effective use of the PRL sites, as detailed in Examples 3 and 4 below:

Note 10: *The Lands D has however informed Audit that most PRL sites had been developed during the earlier terms under the previous leases such that not much redevelopment/additions were expected to take place.*

Example 3

1. One club was granted a PRL involving a site area of over 1 hectare by the seaside in the New Territories for use as a "Recreation Club". As at December 2011, the club had some 1,000 members.

2. Based on the HAB's and the Lands D's records, facilities available on this PRL site included a barbecue area, a grassland area (for camping) and a 2-storey clubhouse with a resting area and a cafe only. According to usage reports submitted by the club to the HAB since October 2012, the PRL site has mainly been used by the club members for barbecue.

3. Audit noted that the Lands D, when processing the renewal of the PRL in 1981, had already noticed that the large area of land occupied by the club was "grossly under-utilised" and there was a case for reducing the club's land holding. The case was brought to the attention of the CRS which made enquiries with the club. It was then understood that the club was taking in more members and the use of the PRL site would increase with improved access provided to that area. However, the case was not adequately followed up since then.

Source: HAB/Lands D records

Example 4

1. Another club located in the urban areas was granted a PRL involving a site area of over 1 hectare for use as a "Recreation Club". According to the HAB's records, as at March 2013, the club had some 210 members, with another 2,000 dining members.

2. Based on the HAB's and the Lands D's records, sports facilities available on this PRL site included three tennis courts, two swimming pools and one basketball court. Based on the HAB's records, the usage of the facilities was low (e.g. some 30% for the tennis courts for the quarter ended March 2013). A site visit in June 2013 further revealed that the basketball court and swimming pools were in poor condition, and had been closed for repair since June 2012 and March 2013 respectively. As at September 2013, both facilities were still closed for repair. Based on the club's usage returns submitted to the HAB, Audit noted that no Outside Bodies had used the club's sports facilities for the six months ended March 2013.

3. In November 2012, the club informed the HAB that it planned to redevelop the site subject to renewal of the PRL.

Source: HAB/Lands D records

Lack of an effective mechanism to monitor the use of the PRL sites

2.11 Apart from the inadequate pursuit of the policy decision on the need to clearly define the permitted recreational purpose in the PRLs, Audit has also noted that an effective mechanism is not in place within the Government to monitor the use of the PRL sites. No lease requirement is laid down for the policy B/D to approve the facilities to be provided on the PRL sites. Although the HAB is the policy bureau for the PRLs (see para. 1.4 and Note 11), the lease conditions only require the clubs to seek the Lands D's approval of the development plans for the PRL site (applicable to new PRLs granted after 1979 only). Audit noted that with PTGs granted by the Government for other purposes (e.g. PTGs for the development of private hospitals, schools or welfare centres), apart from the Lands D which, as the government land agent, would approve building plans submitted by lessees to confirm compliance with the lease conditions, the policy B/D is also required to take steps to satisfy itself that developments on the PTG site have fully met the purpose of the grant as well as the economic, social and community needs in a timely and appropriate manner. For example, with PTGs granted for the development of private hospitals, apart from approval given by the Lands D for buildings to be erected on the site, the Department of Health (as the policy B/D) is also obliged by the lease conditions to approve in writing the facilities to be built/operated, including facilities for ancillary uses, by the private hospitals on the land held under PTGs (Note 12).

Note 11: *At a meeting in September 1977, the Working Group for the 1979 Report agreed that the Secretary for Home Affairs should be responsible for monitoring and deciding the extent to which the PRL was used for "social functions and other recreational activities as are ancillary to such use" was reasonable, and for advising the land authority if the condition had not been complied with.*

Note 12: *The PTGs for private hospitals have usually set the lease requirement that "The grantee shall ...erect and maintain upon the lot ... a non-profit-making hospital of ..... as may from time to time be approved in writing by the Director of Health ... and shall not at any time erect or maintain upon the lot any building other than a building or buildings required for the purposes of the said hospital to which the Director shall have given his prior approval in writing."*

Audit comments

2.12 With the inadequate pursuit of the 1969 and 1979 policy decisions on the need to clearly define the permitted recreational use of PRL sites (see para. 2.9(a)), coupled with the lack of an effective mechanism within the Government to monitor the use of the PRL sites (see para. 2.11), many of the private sports clubs today are providing many types of non-sports facilities on the land under the PRL sites. While the 1979 Report had stated that proportions of land to be used for recreational and ancillary purposes would depend on circumstances which would depend upon the nature of the clubs, their membership, location and other factors (see para. 2.8(d)), in the absence of planning standards laid down by the Administration (see para. 2.9(b)), private sports clubs on PRL sites are enjoying much freedom in the use of the Government land granted to them at nil or nominal premium.

The need to review the private sports clubs' positions from time to time

2.13 The Advisory Committee considered in its 1968 Report that in the interests of a wider section of the community, the private sports clubs ought to expand their membership and increase the extent of the use to which their grounds were put. In anticipation that the demand for public open space in the urban areas would likely increase with growth of the population and rising aspirations, the Advisory Committee also considered that the Government should review the clubs' positions from time to time to ensure that public interest was served. When the 1968 Report was tabled in January 1969, ExCo was further informed by the Administration that the Government would wish to conduct similar reviews of the PRL policy at suitable intervals in future as the public interest required. Against this background, a Working Group was appointed in 1977 to review the PRL policy and to make recommendations regarding the renewal of PRLs which would be due to expire in 1981 or 1982 (see para. 2.5).

2.14 The existing Government policy on PRLs is largely based on principles laid down in 1968 and 1979 (see para. 2.2). Since the last comprehensive review in 1979, there was no evidence that the HAB (or the then Broadcasting, Culture and Sport Bureau (BCSB) before April 1998) had issued directives urging the private sports clubs to expand their membership and to increase the extent of the use to which their grounds were put. The Administration had also not reviewed the clubs' positions from time to time to ensure that public interest was served. In fact, the HAB had rarely collected membership and usage information from the clubs for monitoring until more recently when most of the PRLs were about to expire, but such usage information was mainly confined to sports facilities which had been opened up to Outside Bodies (see para. 1.13). Table 1 shows the changes in the numbers of members for some of the clubs in the past 35 years. Today, some of the clubs still have limited numbers of members. A full list of 32 private sports clubs with their numbers of members is shown at Appendix A.

Table 1

Membership in selected private sports clubs on PRL sites over the past 35 years

Lessee	Approximate PRL site area (hectares)	No. of members		
		1976/77 (a)	Latest known position (b)	Increase/ (decrease) (c) = (b) − (a)
Club 5	177.3 (2 PRLs)	2,326	2,498	172
Club 6	129.0	2,560 (position as in 1994 — Note)	2,479	(81)
Club 7	2.0	273	1,064	791
Club 10	2.1	1,628	2,500	872
Club 12	6.5	261	447	186
Club 18	1.2	150	216 (with another 2,047 dining members)	66
Club 19	1.2	693	558	(135)
Club 22	2.4	764	685	(79)

Source: *HAB/Lands D records and company search*

Note: *Club 6 was granted the PRL in 1978, but had its developments constructed by phases with the last phase completed in the early 1990s.*

Remarks: *Only clubs occupying lands held under PRLs of sizeable areas, but with limited numbers of members are listed in this Table.*

2.15 Audit found that for some of the clubs, the growth in the number of members had remained sluggish for many years, with a few clubs even recorded a reduction in their number of members (e.g. Club 22). Taking one Club in Table 1 as an example, although the PRL had involved a site area of over 100 hectares, Audit found that the number of members of the Club had declined from some 2,700 in year 2000 to some 2,500 in 2013.

2.16 As early as July 1974, when seeking approval for the PRL, ExCo endorsed that the Club's M&As should stipulate that its membership was not transferable and debentures it issued should not be marketable commodities. Therefore, the lease conditions have provided that the rights and privileges of membership in the Club should be personal to the member concerned only, and should not be transferable, and should cease upon the death of such member or upon his ceasing to be a member. Additionally, a debenture holder may surrender his debenture to the Club for such consideration as the Club should decide. According to the Club's M&As and the HAB/Lands D's records:

- The Club has six types of members who are restricted to the use of one (or more) of the Club's different facilities. Under the Club's M&As, a member must subscribe for a debenture and therefore must be a debenture holder. However, a debenture holder may not be a member. He may have ceased to be a member of the Club by reason such as resignation, termination, death or liquidation. A debenture holder holds a certain number of units of debentures which carry with them the right of nominating an individual person as member.

- There had not been any increases in the number of members for the Club for many years. As at 30 September 2013, the Club had some 3,300 debenture holders, but only around 2,500 members.

(to be continued)

(Cont'd)

- Currently, a very limited quota was set by the Club for the surrender of debentures. Under the Club's "Surrender and Reissue" scheme, after a debenture holder had notified the Club of his desire to surrender the debentures, the Club would notify the debenture holder as to whether there was an acceptable applicant for membership, who was willing and able to subscribe for new debentures, of value at least equal to the current value of the debentures (with current value to be determined by the Club). If the debenture holder found it acceptable, the Club would proceed with the surrender and issue new debentures to the applicant. In accordance with the M&As, the Club would pay the outgoing debenture holder a premium after completing the surrender and reissue. Owing to the limited quota set, the Club more recently informed the HAB that a debenture holder on the Club's surrender waiting list might have to wait some 20 years (the longest) for the surrender of his debenture.

The fact that many debenture holders have rescinded their membership and the number of members for the Club had declined and maintained at 2,500 for many years on a PRL site of sizeable area warrants the HAB's attention. In response to Audit's enquiries on the usage of the Club's golf facilities (Note 13), the HAB was provided by the Club in October 2013 with its usage information for the first quarter of 2013. Audit noted that while the Club's 18-hole golf course was reported to have been "fully utilised", the usage of its executive nine golf course was low (around 10%). This may also warrant the HAB's attention.

2.17 To ensure that public interest will continue to be served, Audit considers that the HAB needs to keep the clubs' membership and use of the PRL sites under regular review (Note 14). In future, the HAB should also step up controls to ensure that commitments made by the Administration to ExCo relating to PRL policy are properly followed through for implementation.

Note 13: *Apart from usage by members, the Conditions of Grant for the PRL to the Club contain provisions for public use of the golf courses with an overall limit of 10% of the Club's playing capacity, as well as provisions to allow usage by eligible outside bodies of the Club's facilities when required by the CAs.*

Note 14: *In this connection, the PRLs contain no provisions to govern the size of membership and the usage of the clubs' facilities.*

Granting of a new PRL in 1999

1979 policy decisions

2.18 The Working Group stated in its 1979 Report that the Government should endeavour to provide adequate public recreational facilities for the population, particularly in the new development areas, and private recreational facilities were secondary to this provision and should, as a general rule, only be provided, if at all, on the periphery of or outside the development areas. The Working Group had also set the following principles:

(a) ***Urban areas.*** Clubs on prevailing PRLs should be allowed to remain in situ as long as the land they occupied was not required for a public purpose and that they continue to use the property for the recreational purposes for which it was originally granted. The Working Group considered, apart from the lack of suitable sites, in the light of political implications and the financial implications to the clubs, that renewal of the PRLs conditional upon their resiting away from the urban areas was quite an impracticable proposition. However, new applications would still be subject to examination individually; and

(b) ***New Territories.*** The basic principles for the urban areas in (a) above should also apply to the urban areas in the New Territories. However, even in the New Territories urban areas, the Working Group agreed that NGOs which:

(i) adopted an open-door membership policy;

(ii) provided virtually public services; and

(iii) promoted a sense of community belonging,

would have a strong case for being allocated new PRLs. Even so, the applicants must be non-profit-making bodies with a non-discriminatory membership policy and had a wide representation with low charges or was providing facilities for recreation of a sort not already available in Hong Kong (see para. 2.5(e)). Outside the New Territories urban areas, whilst there might be scope for allocating land for private recreation, applications should be considered on their individual merits subject to the availability of land (see para. 2.5(f)).

Delegation of authority for granting of PRLs

2.19 According to the Government land policy, all direct land grants have to be subject to stringent policy scrutiny and have to be thoroughly considered to be justified in the public interest, with specific approval granted by ExCo or by delegated authority exercised in accordance with the approval criteria set by ExCo, on a case-by-case basis. The authority to approve PRLs was delegated by ExCo to the Administration as early as 1973, with variations in the details of delegation over the years. However, the Administration informed ExCo in 1973 that individual cases where they were considered to be of sufficient importance would continue to be submitted to ExCo for advice. In May 1981, the then Secretary for the Environment issued an internal instruction indicating that cases of PRLs might be approved by the Lands D without reference to ExCo when the relevant policy bureau's approval had been obtained.

One PRL for land in the New Territories granted to a Club in 1999

2.20 In September 1999, a Club (Note 15) was granted a new PRL, for 21 years (1999 to 2020) at a premium of $1,000. The new PRL, involving a site area of some 170 hectares in the North District, was granted to replace the following lots and tenancy:

Note 15: *In accordance with the 1979 policy decisions, an applicant for a new PRL must be a non-profit-making body (see para. 2.18(b)). In this connection, the Club is limited by guarantee and is not subject to profits tax because, under section 24(1) of the Inland Revenue Ordinance (Cap. 112), it is deemed not carrying on a business in Hong Kong.*

(a) a lease, involving a site area of 159 hectares, had been granted to the Club on a year to year basis since December 1930 ("old lease") for the lawful purposes of the Club in accordance with its M&As. In the old lease, there was no provision on the date of expiration of the tenancy nor was there any specific provision on restriction for renewal. The tenancy would run from year to year until terminated by proper notice. According to the Lands D's records, if the Government decided not to renew the lease, half a year's notice must be served to the Club (Note 16);

(b) five old scheduled agricultural lots with a total area of 2,699.9 m^2; and

(c) a site with an area of 11 hectares held by the Club since 1990 under a short term tenancy (STT) at market rental, for use as an extension to the existing golf course on the lot referred to in (a) above. The term of the STT was one year certain commencing from 1 November 1990 and thereafter quarterly. In 1997, the Government received annual rentals of some $0.8 million from the Club under the STT.

2.21 Audit noted that as early as April 1987, the Club had written to the then Registrar General's Department (with responsibilities taken over by the Land Registry, the Companies Registry, the Official Receiver's Office and the Legal Advisory and Conveyance Office of the Lands D since 1992-93) for replacing the old lease by a PRL, similar to that which the Club had been granted in the Southern District of the territory, but the proposal was turned down by the Administration.

2.22 In July 1996, the Director of Lands informed the Club that should a PRL be considered, it would not be granted until after July 1997 because a lease of such a large area had not been included within that year's land disposal quota as agreed

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Note 16: *Nonetheless, the old lease also contained a provision to the effect that the lessee, subject to the good behaviour of the club members, should not be disturbed in the tenancy unless the Governor of Hong Kong was satisfied that such disturbance was warranted on strong public grounds. According to the Lands D, resumption of the lot under such a provision would be difficult. If the tenancy was to be disturbed and if approval under such a provision had not been delegated, personal approval from the Governor would have to be obtained.*

by the Land Commission (Note 17). In August 1996, the Director of Lands received a letter from the Club asking for a PRL to cover "the whole of the land now occupied" by the Club in the North District. After a few rounds of exchange of opinions and clarifications, policy support was given by both the then Secretary for Home Affairs (Note 18) and the then Secretary for Broadcasting, Culture and Sport, based on the 1979 policy decisions on grant of new PRLs outside the New Territories urban areas (see para. 2.18(b)). The Lands D granted the PRL to the Club in September 1999 under delegated authority for approving PRLs (see para. 2.19).

2.23 In this case, the 21-year PRL was granted to the Club in September 1999 in order to rationalise various land holdings held by the Club, including the old lease and the STT (see para. 2.20(a) and (c)), and the Lands D had obtained the necessary policy support (see para. 2.22). Yet, Audit noted that this case of granting a new PRL to the Club was peculiar in the following aspects (see the chronology of events relating to the granting of this PRL at Appendix B):

(a) ***A PRL of significant site area involved, with part of the land previously covered by an STT.*** The PRL was granted in response to a request from the Club in 1996 (see para. 2.22), which asked the Government to consider the granting of a PRL covering the whole of the land then occupied by the Club in the North District. The PRL granted had not only involved a large site area of some 170 hectares, over 90% of which had been occupied by the Club under the old lease for nearly 70 years, but also covered the conversion of an STT involving a site area of 11 hectares which had been let out to the Club at market rental since 1990 (see para. 2.20(c)). In response to Audit's enquiry on the reasons for the granting of a PRL, the Lands D has informed Audit that:

Note 17: *In accordance with Annex III of the Sino-British Joint Declaration 1984, the total amount of new land to be granted was limited to 50 hectares a year. A Land Commission was set up to monitor land use under a Land Disposal Programme. The Land Commission was empowered to consider and decide on proposals to increase the limit, and the Commission ceased operation after June 1997.*

Note 18: *The then Secretary for Home Affairs was responsible for safeguarding the rights of the individual and protecting press freedom, enhancing access to government information and encouraging the community to participate in local affairs.*

(i) the land involved in the STT is relatively inaccessible except through land owned by the Club and thus is incapable of separate alienation, and large site area is not in itself a criterion to require ExCo submission given the delegated authority (see para. 2.19); and

(ii) the tenure of "from year to year" for the old lease was an insecure tenancy and would inhibit the Club from further investing in the club facilities and hence not optimising the use of the site. By converting the tenancy into a typical PRL, the Club could have a fixed and more secure period of tenure for planning the best use of the site;

(b) ***The site was considered to be situated in a rural area of the New Territories.*** If the site in question was located in urban New Territories, the Club could not be granted the PRL because it might not meet the criteria of "a wide representation with low charges" (see para. 2.18(b)). In response to the Lands D's request for policy support for the case in July 1997, the BCSB (now the HAB) sought clarifications in August 1997 on a number of points, including whether the site in question was considered to be in urban or rural areas of the New Territories (see item (e) at Appendix B). Both the Planning Department (Plan D) and the Lands D responded in September 1997 (see items (f) and (g) at Appendix B) that the PRL site should fall within the New Territories rural areas (i.e. the criteria of "applications should be considered on their individual merits" should apply — see para. 2.18(b));

(c) ***The individual merits to justify the granting of the PRL.*** In August 1997, apart from asking for clarifications as to whether the site was located in urban or rural areas of the New Territories, the BCSB also sought the Lands D's clarifications on the individual merits of the Club's application and whether there would be any financial implications for the Government if the STT was converted into a PRL (see item (e) at Appendix B). In response, in September 1997 the Lands D informed the then Planning, Environment and Lands Bureau (PELB, now the Development Bureau), copied to the BCSB (see item (g) at Appendix B), that the merits of the Club's application were that conversion to a PRL

would enable the Government to collect increased rental (Note 19) and to get rid of the unfavourable clause to the Government in the old lease (see Note 16 to para. 2.20(a)). The BCSB gave its policy support for the PRL after receiving the Lands D's clarifications (see item (i) at Appendix B). At the District Lands Conference (DLC — Note 20) meeting held in April 1998 when the granting of the PRL was approved, it was considered that from the land management point of view, it was desirable to replace the old lease with the new PRL which could incorporate better contractual terms and could also increase the annual Government rent;

(d) ***Potential long-term development of Northeast New Territories was envisaged.*** In 1997, the PELB was already working on a territorial development strategy review of Hong Kong (Note 21). In that review, a number of major constraints on development in the New Territories were identified, including the golf courses. It was then considered in a paper submitted by the Plan D to the Committee on Planning and Land Development (Note 22) that "… it is highly unlikely that such areas *(i.e. areas for special uses like golf courses)* will be made available for urban development unless exceptional circumstances warrant". In March 1997, the Director of Lands indicated in his correspondence with the PELB that should the PRL be granted, the constraint imposed by the golf courses would be a very firm one for the period of the lease (21 years). In response, the PELB pointed out that there seemed to be no

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Note 19: *The Lands D estimated that from converting the old lease and the STT to a PRL, the total annual rental to be received by the Government would increase from $0.8 million to $1.5 million, which would rise "with increases in rateable value" of the site.*

Note 20: *The DLC is chaired by an Assistant Director of Lands. Its members include the responsible District Lands Officer, the case officers of the Lands D, and representatives from other relevant government departments (such as the Highways Department and the Transport Department). The terms of reference of the DLC include the consideration, in the light of overall land policy and land instructions, of the terms and conditions for the disposal of land.*

Note 21: *The territorial development strategy review was conducted between 1993 and 1998 to identify new development areas to accommodate Hong Kong's fast growing population, which was then estimated to rise from some 6.8 million to some 8.1 million by 2011.*

Note 22: *The Committee on Planning and Land Development, chaired by the Secretary for Development, oversees the formulation and review of development strategies and land-use planning.*

intention of developing on a large scale the surrounding land. In September 1997, the Director of Lands further indicated to the PELB, copied to the BCSB, that if at some future date within the 21-year term, the land or part of it was required for a public project, the Government could resume it under the PRL (Note 23); and

(e) ***Deviations from the 1979 Special Conditions.*** The PRL, granted in 1999, had involved a few deviations from the 1979 Special Conditions as endorsed by ExCo to be adopted for all PRLs granted or renewed after 1979 (see para. 2.5(g)), as follows:

(i) the Special Condition on land resumption was amended to provide for no compensation payable by the Government in case of resumption under the lease. According to the Lands D, this was justified because site formation costs incurred by the Club on the PRL site were historic (not incurred subsequent to the granting of the PRL);

(ii) another deviation involved amending the 1979 Special Conditions to allow the Club to use the PRL site for residential purposes for "members of the Grantee and their families, reciprocal members and overseas guests, and members of sports teams competing with the Grantee". Based on the Lands D records, apart from three 18-hole golf courses, a gymnasium and two swimming pools, the Club also provided 51 rooms/suites on the land held under the PRL. The 1979 Special Conditions for PRLs have laid down the requirement that the lessees (including the private sports clubs) "shall not use or permit the use of the lot .... for residential purposes other than for persons employed on the lot by the Grantee". However, in response to a request made by the Club to keep the existing accommodation facilities which had already been provided on the site under the old lease (see item (k) at Appendix B), this restriction had been uplifted to allow the use on the PRL site for residential purposes for members and their

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Note 23: *The new PRL provides the Government the power to resume, re-enter upon and retake possession of the lot if required for the improvement of Hong Kong or for other public purpose whatsoever (as to which the decision of the Chief Executive of the Hong Kong Special Administrative Region shall be conclusive), and 12 calendar months' notice is required to be given and no compensation shall be paid by the Government to the Club.*

families, and guests. In response to the Lands D's request for policy support to the deviations from the 1979 Special Conditions, the HAB indicated in December 1998 that it had no objection from a recreation and sport angle (see items (l) and (m) at Appendix B); and

(iii) the lease had also excluded the 1979 Special Condition which required the Club to submit the Master Plans for the development of the lot to the Director of Lands for approval (which should have been applicable to all new PRLs granted after 1979 — see para. 2.8(e)(ii)). As informed by the Lands D, the 1979 Special Condition for submission of Master Plans was not included because the Club had already been developed and the Club's facilities, including accommodation, had already existed before the PRL was granted. While noting the Lands D's explanation, Audit observes that the inclusion of the 1979 Special Condition for submission of Master Plans can provide better basis for the Government to monitor and regulate any future developments (e.g. changes to the number and nature of accommodation). In particular, Audit has noted that in another PRL (granted to another Club), the lease has similarly allowed that Club to provide accommodation on the site for its members. Apart from the submission of Master Plans, Special Conditions were included in that PRL to require that Club to seek the Lands D's approval for any such residential accommodation to be provided for its members, including the number and nature of such facilities.

In response to Audit's enquiries, the Lands D explained that in the case of the PRL to the Club, it was not unreasonable or unacceptable in the circumstances to keep to the accommodation provision in the surrendered lease (i.e. the old lease) whereas in the case of the other Club (see (iii) above) which has similarly provided accommodation for members, the PRL was granted at the time when accommodation had yet to be built.

Audit comments

2.24 As mentioned earlier, the granting of a new PRL, particularly one involving a large site area, should be subject to very stringent policy scrutiny and thorough examination to ensure that it was fully justified in the public interest. In this case, the PRL granted to the Club has covered a very large site area and has subsumed, as part and parcel of the PRL, an STT of 11 hectares which was previously let out to the Club at market rental. In addition, the PRL involved a few deviations from the 1979 Special Conditions that govern all PRLs granted or renewed after 1979. Given the peculiarities of the case, it might have been more prudent to seek the advice of ExCo before granting the PRL to the Club (see para. 2.19). Whilst noting that the Lands D maintains the view that it had dealt with the case in an appropriate manner, Audit considers that in future cases of sufficient importance, the Administration should seek the advice of ExCo before the PRL is granted.

The urgent need for a comprehensive review of the PRL policy

2.25 PRLs are non-renewable leases and the Government has the sole discretion of renewing or not renewing them. At the same time, it is recognised that if the Government were to change a long-established policy on the renewal of a type of leases, it would reasonably be expected that lessees affected by such a change in policy should be given sufficient notice of such change. As such, the conduct of a comprehensive policy review well before each renewal exercise is of paramount importance.

2.26 The Government's PRL policy was reviewed in 1968 and 1979, some two to three years before most PRLs were about to expire. In the event, the PRLs were renewed in 1971 and again in 1981. In 1997, the Administration informed the Provisional Legislative Council of the then lease renewal policy for recreational purposes, i.e. such leases upon expiry could be extended for a term not exceeding 15 years. Most PRLs were renewed either in 1996 or 1997. With lease terms of 15 years, these PRLs were due to expire again in 2011 or 2012. In 2010, the HAB

initiated an internal review of the PRL policy (Note 24) and briefed the lessees publicly of the outcome of the review and the consequential new lease requirements (para. 1.13 is relevant). However, since the last comprehensive PRL policy review in 1979, the Administration had not conducted another similar review.

2.27 In April 2007, the Administration informed the LegCo Panel that the then Government's position was that:

(a) the original justification for the PRL policy was to facilitate the promotion of sports and recreational pursuits for the benefit of the community at large. With the extensive provision of public leisure facilities over the past decades, any new applications for such land grants could not be readily justified; and

(b) a review of land grants or leases which were still in force would inevitably involve complex legal and financial issues. With competing priorities, the HAB had no plan to conduct a comprehensive review on the matter. Leases that were due for renewal would be considered on a case-by-case basis taking into account all relevant factors.

In July 2011, the HAB informed the LegCo Panel that the Administration would conduct a comprehensive policy review after the current round of lease renewals. A chronology of events leading to the more recent Government decision for a comprehensive policy review after the current round of renewal exercise is at Appendix C.

2.28 There has not been any comprehensive PRL policy review since 1979. As a result, most of the PRLs which expired in 2011 or 2012 were/would be renewed primarily based on the 1979 policy decisions, albeit modified following the internal review conducted in 2010 and 2011.

Note 24: *As informed by the HAB, the internal review started in June 2010, with the outcome of the review submitted to ExCo for approval in July 2011 (see para. 2.6).*

Audit comments

2.29 The existing Government policy on PRLs is largely based on principles laid down over 30 years ago in 1979. In recent decades, circumstances have changed. Many of the principal sports facilities provided by the private sports clubs on PRL sites today are commonly provided by the public sports centres operated by the LCSD (Note 25). Although private sports clubs on PRL sites may still be playing a role in contributing to the promotion of sports development in Hong Kong, it is opportune for the Administration to consider whether the recreational purpose for which the PRL was granted needs revisions or refinement to cope with changes in the needs of the community. It is also high time for the Administration to review the appropriateness of continuing the granting of PRLs at nil or nominal premium to private sports clubs.

2.30 Audit considers that the HAB needs to work out its timetable for the conduct of a comprehensive PRL policy review to ensure that the Government's new policy directions on PRLs are readily available to provide a consistent and equitable treatment of all PRL renewals. Among the 17 PRLs that had not yet expired as at 31 March 2013 (including 8 PRLs granted to private sports clubs), four will expire between 2013 and 2015, one in 2018 and another in 2020.

Note 25: *It is also recognised that certain types of sports facilities operated by private sports clubs are still not commonly provided in government-operated venues, such as shooting ranges, cricket pitches, golf courses, and lawn bowls greens.*

PART 3: IMPLEMENTATION OF THE "OPENING-UP" REQUIREMENT

3.1 This PART examines the implementation of the "opening-up" requirement set by the HAB on the private sports clubs on the PRL sites.

Historical developments on the "opening-up" of the private sports clubs' facilities

1969 and 1979 policy decisions

3.2 Against the background that land supply in the territory for public use in built-up areas was inadequate, the Advisory Committee stated in its 1968 Report that the PRL should require the lessee to make its facilities available for use by eligible outside parties as specified by the appropriate CA (see para. 2.3(c)). Such uses included:

(a) sports, physical education and other activities by schools, youth clubs and welfare organisations; and

(b) sports, physical education, exercises or displays by Armed and Auxiliary Services.

The Advisory Committee recommended that the CAs, in exercising their power, should satisfy themselves that such uses would not interfere with the proper care and maintenance of the grounds or with the lessees' own use of them.

3.3 In its 1979 Report, the Working Group further observed that based on information gathered from a questionnaire survey, most of the lessees had reported that facilities on their land under the PRLs were well used, but some of the club grounds were underutilised. Considering that these underutilised facilities could be used by outside bodies (such as schools and welfare organisations), the Working Group strongly recommended that the CAs should arrange for these grounds/facilities to be used, as specifically provided for under the 1979 Special Conditions, under which the clubs were required to make available their grounds/facilities for three sessions per week (see para. 2.5(g)(i)). Nonetheless, the

Working Group recognised that members of the clubs should have first call on the use of their grounds and facilities during peak hours (e.g. at weekends and public holidays).

3.4 In accordance with the 1969 and 1979 policy decisions, almost all PRLs contain a requirement for the clubs to permit the use of their grounds and facilities by eligible outside bodies for 3 sessions of 3 hours each per week (the "3 × 3" access requirement) when required by the CAs (Note 26). According to the more recent Special Conditions, CAs and such "Outside Bodies" include the following:

CA	Outside Bodies
Secretary for Education	Schools under the Education Ordinance (Cap. 279)
Director of Social Welfare	NGOs which are receiving recurrent subvention from the Social Welfare Department
Director of Leisure and Cultural Services	NSAs which are affiliated to their respective International Federations and are members of the Sports Federation & Olympic Committee of Hong Kong, China
Secretary for the Civil Service	Government B/Ds
Secretary for Home Affairs	Uniformed groups and youth organisations which are receiving recurrent subvention from the HAB

3.5 In the 1990 audit (see para. 1.14), Audit found that eligible outside bodies made little use of the private sports clubs' facilities and the CAs did not play an active role in promoting the availability of the clubs' facilities. In the follow-up of that audit review, the BCSB conducted a survey on the usage of the clubs' facilities by eligible outside bodies for the 2-year period from April 1994 to March 1996. A total of 11,700 hours were reported by 23 private sports clubs on PRL sites to have been used over the period by eligible outside bodies. The BCSB then made the following comments:

Note 26: *Four PRLs do not contain the "3 × 3" access requirement, but they generally contain other provisions for making available their venues/facilities to the public.*

(a) most of the usage were focused on a few clubs (namely Club 13, Club 14, Club 21 and Club 22). The vast majority of the other clubs were not commonly used by the outside bodies; and

(b) NSAs were primarily the major users.

The BCSB concluded in 1996 after its survey that the Administration, with the assistance of the relevant CAs, should regularly circulate information relating to the clubs' facilities to schools and other organisations, and the clubs should also be reminded of their obligation to allow eligible outside bodies to use their facilities. The Administration should request the clubs to simplify their booking procedures.

3.6 In 2001, the HAB reminded the CAs of the need to circulate information to schools and other organisations under their auspices, but did not take any further follow-up action in this regard until March 2010 when many of the PRLs would soon expire and decisions had to be made on whether policy support should be given for their renewal. In March 2010, the HAB requested the Lands D to send out survey forms for the collection of basic information from the clubs on membership and facilities (Survey 1). In May and October 2011, the HAB conducted two more surveys (Survey 2 and Survey 3). The purposes of the three surveys were as follows:

Survey	Purpose
Survey 1 (March 2010)	To collect basic information on membership, staff numbers, facilities available in the clubs and usage of facilities by outside bodies (if available).
Survey 2 (May 2011)	To collect details of facilities available, utilisation by outside bodies in 2010, membership information and number of staff.
Survey 3 (October 2011)	To collect details of facilities available, such as type, number, time slot and charges for use of the facilities by members, guests and non-members (including outside bodies), booking arrangements, staging of international events and publicity measures.

3.7 In May 2011, before the conduct of Survey 2, the HAB held a briefing session for explaining to all PRL lessees the further "opening-up" arrangement of the PRLs. In July 2011, the HAB informed the LegCo Panel that in the forthcoming renewal of the PRLs, the Administration would require all lessees to further open up their facilities to Outside Bodies. Specifically, they should:

(a) open up their facilities to Outside Bodies for 50 hours per month or more. They should also accord priority to Outside Bodies in hiring certain designated sessions;

(b) put in place junior membership schemes that would allow young sportsmen and sportswomen below a certain age to join at significantly reduced rates of entry;

(c) allow NSAs to use their facilities for training or competitions for an additional minimum of 10 hours per month; and

(d) allow NSAs to use their facilities for staging recognised international events, so that members of the public could have more opportunities to watch competitions which were staged in private sports clubs.

Under the renewed PRLs, Outside Bodies were allowed to book the lessees' facilities directly without going through a CA.

3.8 As mentioned in paragraph 2.6, ExCo endorsed in July 2011 that prevailing PRLs which expired/would expire in 2011 or 2012 would be renewed in accordance with the 1979 policy decisions subject to the clubs having met various renewal criteria, including the modified lease conditions on the provision of greater access to Outside Bodies.

Efforts made to improve publicity for the greater access requirement

3.9 Since July 2011, the HAB has taken the following measures to improve publicity for the "opening-up" arrangement of the lessees' sports facilities on the land under the PRLs:

(a) placing advertisements in the print media to publicise the availability of sports facilities on premises operated under the PRLs;

(b) asking the lessees to provide full information on their "opening-up" schemes (which are for opening up their facilities for use by Outside Bodies) on their websites;

(c) asking the CAs to advise Outside Bodies directly of the availability of sports facilities for hire on the lessees' premises;

(d) giving detailed information on the "opening-up" schemes to Outside Bodies through the CAs;

(e) giving detailed information on the "opening-up" schemes to District Offices of the Home Affairs Department and the Sports Federation & Olympic Committee of Hong Kong, China for onward transmission to their stakeholders; and

(f) uploading information on the "opening-up" schemes onto the website of the HAB.

3.10 At the LegCo Panel meeting held in June 2013, the HAB reiterated that the lessees (including the private sports clubs) should be encouraged to contribute more to the Government's key policy objectives for sports development, namely:

- Promoting sport in the community
- Promoting elite sports development
- Promoting Hong Kong as a centre for international sports events

At the same meeting, the HAB also reported to the LegCo Panel that:

(a) in line with the current PRL policy, the HAB would renew PRLs for a 15-year term, subject to compliance with the following conditions:

(i) the site not being required for a public purpose;

(ii) there being no significant breach of lease conditions; and

(iii) the lessee having a non-discriminatory membership policy.

In addition, the lessees were required to submit for the HAB's approval their "opening-up" schemes, and lease renewal procedures by the Lands D had proceeded on the basis of the approved schemes;

(b) the HAB had met individually the lessees with PRLs expired in 2011 or 2012 to discuss the detailed requirements taking into account the scale and range of facilities available at each PRL site. The HAB had also advised the lessees explicitly that there should be no expectation that their PRLs would be further renewed when they next expired, and that even if the PRLs were renewed, they might not be renewed at nominal premium or on the same terms and conditions as before;

(c) the HAB had stepped up publicity on various fronts (see para. 3.9); and

(d) the HAB had asked all lessees on PRL sites to submit quarterly reports on the utilisation of their sports facilities. To improve the monitoring process, the HAB was securing funds to set up an electronic database, and would conduct random checks and act on complaints. If lease enforcement action was justified, the HAB would follow up with the relevant enforcement authority.

Audit findings

3.11 ExCo endorsed in July 2011 that PRLs should be renewed in accordance with the 1979 policy decisions, subject to the clubs' compliance with the greater access requirement (see para. 3.8). Whilst the HAB had made concerted efforts in the past two years to persuade the clubs to open up their facilities on the land under the PRLs (see paras. 3.9 and 3.10), such "opening-up" arrangements are applicable to Outside Bodies only.

3.12 Over the years, some of the private sports clubs have contributed to the promotion of sports development in Hong Kong through the hosting of major international sporting events. Examples include:

- The Hong Kong Golf Open Championship
- The Hong Kong Cricket Sixes
- World Singles Champion of Champions
- The Hong Kong International Bowls Classic
- The Hong Kong Soccer 7s

3.13 Whilst recognising that the greater access requirement set by the HAB is still in its early stage of implementation, Audit examines the following issues in this PART:

(a) the level of usage by Outside Bodies (paras. 3.14 to 3.27);

(b) the extent of greater access achieved from the "opening-up" arrangement (paras. 3.28 and 3.29);

(c) conflicts between the private sports clubs' "Members only" policy and the Government's "opening-up" objective (paras. 3.30 to 3.32); and

(d) other issues which may affect the implementation of the greater access requirement (para. 3.33).

The level of usage by Outside Bodies

3.14 Members of private sports clubs are often required to pay substantial sums for entrance fees and monthly subscriptions. It is therefore understandable that they may expect to be entitled to enjoy the clubs' facilities with privacy and exclusivity. The 1979 Special Conditions provide that the PRL lessee should not permit the use of the lot or any part thereof by, among others, any persons other than "members of the grantee or their guests, guests of the grantee, and members of sports teams competing with the grantee", but the PRL lessee might use or permit the lot or any part thereof for the purpose of raising funds for any charity or charitable body, or for any major sporting function or other public entertainment etc. subject to the lessee's giving not less than six weeks' notice in writing and obtaining the written consent of the Director of Lands.

3.15 Before the current round of PRL renewals, the Special Conditions had laid down the requirement for the private sports clubs to make their facilities available for use for a maximum of "3 × 3" per week by eligible outside bodies (see para. 3.4). However, not until mid-2012 did the HAB begin to publicise that eligible outside bodies might contact the lessees direct to book their sports and recreational facilities during designated time slots for sporting use. A greater access requirement was only laid down as Special Conditions in the more recently renewed PRLs (see paras. 3.7 and 3.11).

The previous "3 × 3" access requirement

3.16 Despite the fact that the "3 × 3" access requirement has been set as a Condition of Grant in all PRLs after 1979, Audit found that in the past 13 years (2000 to mid-2013), no eligible outside bodies had ever sought the CAs' assistance for using the clubs' facilities. In July 2013, Audit surveyed all five CAs (see para. 3.4). They confirmed to Audit that:

(a) for the 13 years, they had not received any enquiries or requests from eligible outside bodies for using the private sports clubs' facilities; and

(b) before 2011, they had not regularly disseminated information about the availability of the clubs' facilities to eligible outside bodies.

The survey results tallied with the position reported by the HAB to LegCo in 2011. In December 2011, the Secretary for Home Affairs informed LegCo that in the past five years, no eligible outside bodies had sought the CAs' assistance and a considerable number of outside bodies had directly approached the clubs for using the clubs' facilities.

3.17 Despite the fact that the "3 × 3" access requirement has been effective since 1979, there was no definition in the 1979 Report of how the "3 × 3" access requirement was to be calculated (e.g. whether the "3 × 3" access requirement was directed to individual facilities or the entire set of facilities). In fact, in the past 30 years, the HAB had not provided the private sports clubs with a clear definition of how the "3 × 3" access requirement was to be calculated, and the clubs had also made no enquiries. That is, over the past 30 years, there had not been any clarifications or enforcement of the "3 × 3" access requirement.

The current greater access requirement

3.18 As a lease condition in the more recently renewed PRLs, the private sports clubs are required to submit for the HAB's approval their "opening-up" schemes (see para. 3.10(a)). As mentioned earlier, Outside Bodies are allowed to contact the clubs direct, but they can also contact the CAs for assistance if they encounter problems in the booking process. Besides, the HAB has required the clubs to submit quarterly reports on usage under the approved "opening-up" schemes. This arrangement has been implemented by the clubs since the last quarter of 2012 on a voluntary basis for leases still bound by the old lease conditions, but will become a lease condition when their PRLs have been renewed (see para. 3.10(d)). Furthermore, the CAs have also been asked to provide the HAB with quarterly statistics on requests for assistance from Outside Bodies under their purview.

3.19 Under the approved "opening-up" schemes in the more recently renewed PRLs, the "opening-up" hours are calculated based on facility-hours, which means that the use of any individual sports facility for any one hour will be counted as one facility-hour. For example, the use by an Outside Body of one table tennis table and one tennis court for an hour each would accordingly be counted as two facility-hours, and similarly, the use of four lanes in a swimming pool for an hour would be counted as four facility-hours. Example 5 shows how the "opening-up" facility-hours for a club's approved scheme are calculated by the HAB.

Example 5

Calculation of facility-hours under the approved scheme

1. One club was committed under the approved scheme to open up its tennis courts for the following time slots to Outside Bodies:

Number of tennis courts	"Opening-up" hours	Facility-hours per month (Note)
Two	Monday to Friday (except Wednesday) (11 a.m. — 4 p.m.) Wednesday (2 p.m. — 4 p.m.) Public holidays (not applicable)	176
One	Weekends and public holidays (11 a.m. — 1 p.m. and 2 p.m. — 4 p.m.) Weekdays (except public holidays) (11 a.m. — 4 p.m.)	132

2. The HAB reported to the LegCo Panel that each month, the club had committed to open up 720 facility-hours. These 720 facility-hours included 308 (176+132) facility-hours of its tennis courts (see para. 1 above) and 412 facility-hours of its other facilities (namely swimming pool, basketball court and conference room) for booking by Outside Bodies.

Source: *Audit analysis of HAB records*

Note: *The HAB's methodology used in calculating the "opening-up" hours is as follows:*

176 hours = 2 × 5 hours × 4 days × 4 weeks + 2 × 2 hours × 4 weeks
132 hours = 4 hours × 2 days × 4 weeks + 5 hours × 5 days × 4 weeks

Implementation of the "opening-up" requirement

3.20 In a briefing on PRLs held in June 2013, the HAB urged the clubs to start opening up their sports facilities to Outside Bodies in line with the greater access requirement and to step up publicity, even if their PRLs had not yet been renewed. The HAB also reported to the LegCo Panel that, following negotiations with the individual private sports clubs, it had so far secured the agreement from the clubs on 20 PRL sites (see Table 2) to open up their facilities far beyond the minimum of 60 (50 + 10) hours (see para. 3.7(a) and (c)).

Table 2

Monthly "Opening-up" facility-hours committed by clubs and their reported usage

PRL	Club	Committed "opening-up" facility-hours (Note) (a)	Reported usage (facility-hours) in March 2013 (b)	Percentage (c) = (b) ÷ (a) × 100%
2	Club 2	710	33	4.6%
3	Club 3	656	0	0.0%
4	Club 4	280	27	9.6%
6	Club 6	1,692	618	36.5%
7	Club 7	320	34	10.6%
11	Club 5	660	12	1.8%
12	Club 10	490	50	10.2%
15	Club 12	504	103	20.4%
17	Club 13	1,389	1,583	114.0%
20	Club 16	1,200	709 (see Example 6 in para. 3.23)	59.1%
21	Club 17	2,302	356	15.5%
22	Club 18	720	97 (see Example 7 in para. 3.23)	13.5%

Table 2 (Cont'd)

PRL	Club	Committed "opening-up" facility-hours (Note) (a)	Reported usage (facility-hours) in March 2013 (b)	Percentage (c) = (b) ÷ (a) × 100%
23	Club 19	2,250	126	5.6%
25	Club 21	3,320	545	16.4%
26	Club 22	1,178	81	6.9%
27	Club 23	161	51	31.7%
28	Club 13	382	0	0.0%
29	Club 24	272	0	0.0%
30	Club 25	320	30	9.4%
31	Club 26	284	0	0.0%
Overall		19,090	4,455	23.3%

Source: *Audit analysis of HAB records*

Note : *By the end of March 2013, only five of the above 20 PRLs had been renewed in the current round of renewals. That is, strictly speaking, only five of the approved schemes listed above are enforceable.*

3.21 Column (a) in Table 2 shows an encouraging picture of the clubs' "opening-up" schemes. However, a "snap-shot" (taken in March 2013) of the actual usage, based on the clubs' quarterly reports submitted to the HAB (see Column (b) in Table 2), shows that in most cases, the actual usage was far below the committed "opening-up" hours. Whilst Audit understands that strictly speaking, most of the approved schemes had not yet been effective by March 2013, the low usage figures indicate that the HAB needs to continue stepping up its efforts to urge the clubs to promote the availability of their sports facilities.

Implementation of the "opening-up" requirement

3.22 As at the end of September 2013, the HAB had approved the "opening-up" schemes for 20 of 23 PRLs which were in the process of renewal. Among the three remaining PRLs with schemes not yet approved, Audit noted from the HAB records that from October 2012 (before which no reporting to the HAB was required) to June 2013, the PRL granted to the club in Example 3 in paragraph 2.10 for use as a "Recreation Club" had recorded no usage by Outside Bodies, and the club had limited facilities, other than a barbecue site, that could be opened up for use by eligible outside bodies. Audit also noted from the HAB's records that the club proposed in June 2013 to provide water sports training courses under a proposed "opening-up" scheme, but to implement the courses, the club had yet to purchase boats and to recruit a manager to organise the courses. The HAB needs to closely monitor how the club would implement its proposed "opening-up" scheme before granting approval.

3.23 Column (b) in Table 2 shows the private sports clubs' reported usage by Outside Bodies in March 2013 only and, as mentioned earlier, the reporting arrangement for most of the clubs is on a voluntary basis before their PRLs are renewed. The HAB has yet to finalise detailed guidelines on how the clubs should report their usage by Outside Bodies under the approved schemes, and has yet to verify the usage reported. Meanwhile, in the absence of detailed guidelines and any verification conducted by the HAB, Audit has concerns about the accuracy of some of the reported usage. Two examples of questionable reporting are shown below.

Example 6

1. One club had committed to opening up 1,200 facility-hours a month under its scheme approved by the HAB. It reported that in March 2013, the club's facilities on the land under the PRL had been used by Outside Bodies for 709 hours.

2. Audit found that the 709 hours included the following:

(a) 495 hours of tennis courts were reported to have been used for competitions, but no documentary proof could be produced to support the usage by Outside Bodies, e.g. booking forms (as required to be completed under the booking procedures agreed by the HAB with the club);

(b) 48 hours of a tennis court were used by a school in the neighbourhood through private arrangements, but the usage was again not supported by booking forms; and

(c) 4 hours of the children's playground (which was not a type of sports facilities included under the approved scheme) used by an NGO.

Source: Audit analysis of HAB records

Example 7

1. Another club had committed to opening up 720 facility-hours a month under its scheme approved by the HAB. It reported that in March 2013, the club's facilities on the land under the PRL had been used by Outside Bodies for 97 hours, which covered usage of the club's tennis courts and conference room.

2. Audit however found that the reported usage was related to usage by two private organisations, both of which were not Outside Bodies. One of them used the facilities for providing fee-charging training courses for members and non-members of the club, whereas the other used the conference room for conducting music classes. Strictly speaking, usage of the conference room should not be grouped as usage of sports facilities.

Source: Audit analysis of HAB records and site visits

3.24 As at the end of September 2013, 7 of 23 PRLs had been renewed (see para. 1.12). To get prepared for the implementation of the greater access requirement, Audit considers it essential for the HAB to issue more detailed guidelines and set up a proper mechanism as early as possible to monitor the quarterly usage reports submitted, once all PRLs have been renewed.

3.25 According to the HAB, some facilities in private sports clubs may be used less frequently by Outside Bodies, either because these Outside Bodies were not aware of the availability of such facilities or such facilities were not in easily accessible locations. The HAB considered that this situation could be improved by enhanced publicity and information dissemination, including requiring the clubs to publicise information of their facilities on their websites and uploading the relevant information onto the websites of the HAB and CAs.

3.26 It is recognised that the HAB has taken more vigorous actions in recent years to step up publicity on various fronts, including requiring the clubs to publish their "opening-up" schemes on their websites, and uploading details of the clubs' "opening-up" schemes onto the HAB website (see para. 3.9(b) and (f)).

3.27 According to the HAB's records, the clubs have allowed three major types of users to use their facilities, namely members, non-members (including guests of members) and Outside Bodies. One major criterion which the HAB considered in approving the clubs' "opening-up" schemes was whether they had adopted a reasonable fee scale for charging Outside Bodies. In assessing the reasonableness of the fees, the HAB made reference to the fees charged by the LCSD for use of similar public sports facilities. Audit analysed the fees set by the clubs and found that most of them were generally comparable to or slightly higher than those set by the LCSD.

The extent of greater access achieved from the "opening-up" arrangement

3.28 It is quite encouraging, as shown in Table 2 of paragraph 3.20, that the private sports clubs on PRLs had agreed to open up in total almost 20,000 facility-hours a month. Audit however noted that the actual usage reported by many of the clubs was far below the committed "opening-up" hours available and looking

ahead, there are factors which may discourage the use of the clubs' facilities by Outside Bodies (see para. 3.33). Besides, Audit has the following observations on the approved schemes:

(a) as explained in paragraph 3.17, there was no definition of how the previous "3 × 3" access requirement per week (i.e. 3 sessions of 3 hours each per week) was to be calculated. Furthermore, there had not been any effective enforcement of the "3 × 3" access requirement in the past. As the "opening-up" hours per month under the approved schemes were calculated on "facility-hours" basis, a meaningful comparison between the two arrangements cannot be made;

(b) although the committed "opening-up" hours under the approved scheme of individual clubs (to be effective upon the renewal of a PRL) have generally well exceeded the minimum of 60 (50+10) hours per month (see para. 3.7(a) and (c)), the renewed PRLs have also laid down a Condition of Grant that the lessee should provide sports facilities for an aggregate of "not less than 50 hours" per calendar month. According to the HAB:

(i) this minimum access requirement of 50 hours a month was set as an across-the-board benchmark in the PRLs having regard to the fact that some of the clubs are relatively small, have fewer facilities and might not be able to make extensive commitments for "opening-up"; and

(ii) all private sports clubs which have their schemes approved by the HAB today have committed to open up their facilities far beyond the minimum of 50 hours with some exceeding 1,000 hours.

Audit noted the HAB's explanations, but is concerned with the relevance of including such a low minimum access requirement as a Special Condition in the PRLs, given that even the small clubs had committed to open up far more than 50 hours per month; and

(c) some of the "opening-up" hours under the clubs' approved schemes were for less popular sessions (e.g. sessions during lunch hours) or sessions of short durations (say, sessions of 2 hours). Example 8 is shown for illustration.

Example 8

Facilities opened up by one club

Facilities	"Opening-up" hours
1 lane of the swimming pool	May to October (daily 8 p.m. — 11 p.m.) November to April (daily 7 p.m. — 9 p.m.)
1 badminton court	**Weekdays (except public holidays) (11 a.m. — 2 p.m.)**
2 tennis courts	**Weekends & public holidays (12 noon — 2 p.m.) Weekdays (except public holidays) (11 a.m. to 2 p.m., plus 6 p.m. to 11 p.m. additionally for one specified NSA)**
1 table tennis table	**Daily (11 a.m. — 2 p.m.)**
1 golf practice bay	Daily (11 a.m. — 6 p.m.)
1 billiard table	Daily (10 a.m. — 2 p.m.)
1 bowling alley (2 lanes)	Daily (9 a.m. — 1 p.m.)

Audit comments

Audit noted that the "opening-up" hours of some facilities are mainly during lunch hours (see shaded rows above). Based on the club's quarterly reports submitted to the HAB, the club's reported usage of its tennis courts by Outside Bodies of 33 facility-hours in March 2013 was all related to use in the evening.

Source: Audit analysis of HAB records

3.29 It is recognised that the low reported usage by Outside Bodies of some of the private sports clubs' facilities could be due to the fact that the majority of the approved "opening-up" schemes have yet to be implemented. Nonetheless, Audit considers that the HAB needs to further step up publicity. For example, it should coordinate with the Education Bureau to encourage schools in the vicinity of the private sports clubs (e.g. the club in Example 8) to make more use of the clubs' facilities to promote sports development in schools. Audit also noted that a few private sports clubs had sometimes allowed charitable bodies to use the PRL site for fund-raising purposes (see para. 3.14). Such activities were allowed under the Special Conditions and would contribute to the welfare of the community.

Conflicts between the private sports clubs' "Members only" policy and the Government's "opening-up" objective

3.30 Some private sports clubs on PRL sites have invested substantial sums of money and efforts in building up their facilities, and members of some clubs have paid significant sums for entrance fees and monthly subscriptions. It is therefore quite natural that the clubs would give priority to their members.

3.31 The results of the HAB's surveys (see para. 3.6) also revealed that many clubs were reluctant to further open up their facilities for various reasons, including the limited capacity of their facilities and the heavy usage by their members. Some of the clubs' comments given in the HAB's surveys in 2010 and 2011 are shown below:

- The majority of the club members used the clubs' facilities on weekends. Some were already complaining about the waiting time in between games, e.g. tennis.

- The clubs had difficulties to allow outside bodies to use their facilities on weekends or public holidays due to heavy usage by members.

- The club would face significant difficulty, even if it were to comply with the current requisition requirement of up to 9 hours per week if these hours were fully utilised by outside parties. This situation would be exacerbated if the total monthly requisition hours were increased further. This was due to the limited human resources at the club and the increased need for club employees to be on hand to closely supervise and assist any eligible outside bodies and ensure mutually acceptable conduct and correct use of the club's facilities. To further increase this load would simply increase bottlenecks and lead to dissatisfaction from both club members and outside bodies.

- It would be difficult to further open up as a result of the limitation of facilities that would necessarily require the redeployment of in-house staff.

- It was extremely easy to damage the playing surface irreparably, if the wrong footwear was used or the delivery of the bowl was not correct. Unless specialised training was undertaken, it would be devastating to the greens, if novices were allowed to use them on an ad hoc basis.

- The club had difficulties to extend further the facility-hours.

3.32 Understandably, the clubs' "Members only" policy is in conflict with the Government's objective of opening up more clubs' facilities to non-members to better serve the public interest. In Audit's view, the situation in Hong Kong is somewhat unique. Based on research conducted by the HAB, Audit noted that private sports clubs in countries/cities abroad (such as Singapore, Japan, Sydney, New York and Toronto) generally do not enjoy free or nominal use of land or leasehold. As such, the clubs are free to set their entrance requirements, members' and non-members' usage fees, and the extent of usage of the clubs' facilities by Outside Bodies. However, given the historical development of the private sports clubs situated on land held under PRLs in Hong Kong, it is imperative that the Administration should conduct periodic comprehensive review of the Government's PRL policy, taking into account the needs and demands of different stakeholders, and strike a proper balance between the two conflicting objectives.

Other issues which may affect the implementation of the greater access requirement

3.33 The implementation of the approved "opening-up" schemes does not imply that the usage of the private sports clubs' sports facilities by Outside Bodies will necessarily increase. There are quite a number of factors which could discourage Outside Bodies from using the clubs' facilities. These include:

(a) ***The perception of exclusivity.*** This is something which may not be easy to overcome. Many people have the perception that the clubs are only accessible to rich or well-connected people;

(b) ***Limited capacity.*** As indicated by some of the clubs (see para. 3.31), the limited capacity of their facilities and available manpower cannot support the further or extensive opening up of their facilities;

(c) ***A requirement to make advance booking.*** For most private sports clubs, advance bookings (very often at least 21 to 30 days before use) are required, with reservation for a few clubs required to be made 1 to 3 months before the date of use. Although advance booking allows Outside Bodies the right of first call to book the facilities, the need to make advance booking under the laid-down booking procedures has rendered it less flexible for Outside Bodies to use the clubs' sports facilities on shorter notice; and

(d) ***The need to enhance publicity.*** According to the approved schemes, the clubs are required to publish the following information on their websites:

(i) facilities and time sessions available, fees and charges, and application requirements for use of facilities by Outside Bodies;

(ii) facilities and time sessions available, fees and charges, and application requirements for use of facilities by players or representative squads of NSAs;

(iii) application requirements for the staging of international events; and

(iv) details of the junior membership schemes.

Audit found that as at the end of September 2013, of the 20 approved schemes (see Table 2 in para. 3.20), some of the information in (i) to (iv) above was missing on the websites of some of the private sports clubs. In particular, many clubs only published the required information in English. The HAB needs to urge the relevant clubs to speed up with their publicity work, given that 13 of the 20 approved schemes will be effective once PRLs for these clubs are renewed.

PART 4: MONITORING OF COMPLIANCE WITH LEASE CONDITIONS

4.1 This PART examines the Government's monitoring of the private sports clubs' compliance with the Conditions of Grant in the PRLs.

Salient Conditions of Grant in the PRLs

4.2 A lease, be it a PTG or not, normally carries a large number of terms and conditions covering various areas, including user, development conditions, vehicular accesses, parking space requirements, etc. Some of these conditions are essentially governed by legislation and enforcement regimes administered outside the context of lease administration, involving other enforcement agents. An obvious example is building works which fall within the jurisdiction of the Buildings Department (BD) and are governed by the Buildings Ordinance (Cap. 123).

4.3 Apart from the "opening-up" requirement discussed in PART 3, existing PRLs usually contain the following salient Conditions of Grant:

(a) ***User.*** The clubs should use the PRL sites for the recreational purposes defined in the Conditions of Grant, and should not use the PRL sites for any other purposes, including:

  (i) commercial purposes;

  (ii) commercial advertising; and

  (iii) residential purposes other than for persons employed on the land by the clubs;

(b) ***Restriction on redevelopment/new development of the lot.*** Except with the prior written consent of the Director of Lands, the clubs should not erect upon the lot any building or structure or make any extension to any existing buildings or structures thereon. The club should also submit to the Director of Lands for her approval the Master Plans for the

development of the lot and, except with the prior written consent of the Director of Lands, no amendment, alteration or variation should be made to the Master Plans (see para. 2.8(e)(i) and (ii)); and

(c) ***Alienation.*** The clubs should not assign, mortgage, charge, demise, underlet, part with the possession or otherwise dispose of the lot or any part thereof or any building or any interest therein or any part of any building thereon or enter into any agreement so to do.

4.4 PTGs at nil or nominal premium generally disallow commercial activities and subletting on sites. With regard to PRLs granted at nil or nominal premium to the private sports clubs, while the Government would require the clubs to make full use of the PRL sites to meet the purposes of the grants, it disallows the clubs to operate commercial profit-making activities or to sublet any part of their premises on the PRL sites to other individuals or organisations for such activities (see para. 4.3(a)(i) and (c)).

Audit findings

4.5 Against the above background, the following issues are examined in this PART:

(a) monitoring of compliance with Conditions of Grant (paras. 4.6 to 4.12);

(b) suspected non-compliances with Conditions of Grant (para. 4.13); and

(c) useful Conditions of Grant adopted in some PRLs, but not in others (paras. 4.14 and 4.15).

Monitoring of compliance with Conditions of Grant

4.6 Audit selected two major areas for examination in relation to the Government's monitoring of compliance with the Conditions of Grant. They are, namely inspections to ensure that the PRL site is used for intended purposes (paras. 4.7 to 4.10) and common breaches identified by the Lands D (paras. 4.11 and 4.12).

Inspections to ensure that the PRL site is used for intended purposes

4.7 PRLs were granted to private sports clubs to develop and operate sports and recreational activities. The clubs should not use the PRL sites for any other purposes, and compliance with the Conditions of Grant is a pre-requisite for renewal. Thus, the Administration should have established a mechanism to monitor the use of the PRL sites. Nonetheless, breaches for some of the Conditions of Grant are regulated by other enforcement authorities (see para. 4.2), but the Lands D would have to follow up such outstanding cases during the PRL renewal exercises by liaising with relevant enforcement authorities to make sure that they have been settled before the PRLs are renewed. For example, the follow-up of "unauthorised building works subject to removal orders" and "dangerous slopes subject to investigation and remedial works orders" in Examples 9 and 10 in paragraph 4.11 are within the jurisdiction of the BD.

4.8 As mentioned in paragraph 2.11, although the HAB is the policy bureau for the PRLs, the Conditions of Grant have not laid down the requirement for the HAB to approve the facilities to be provided on the PRL sites and to ensure that only a reasonable proportion of the land on the PRL sites was used for social and ancillary facilities. There is also no requirement that the HAB must satisfy itself that the developments on the site have continued to meet the permitted use of the grant before policy support is given for the renewal of the PRL. Audit further noted that the scope and responsibility for monitoring permitted use and conducting site inspections have not been clearly defined between the HAB and the Lands D. In this connection, Audit notes that the LegCo Panel passed a motion in June 2013 calling on the Administration to establish a monitoring and vetting mechanism for the approval and renewal of PRLs, so as to safeguard public interests.

4.9 In September 2013, the HAB informed Audit that as a policy bureau, it would not normally have the role of conducting regular on-site inspections to detect unauthorised building works or to ensure compliance with works-related orders, and would rely on the expertise of the professional departments. However, the HAB has indicated that it would monitor the lessees' compliance with the greater access requirements in PART 3 to allow Outside Bodies greater use of the lessees' sports facilities after their PRLs have been renewed.

4.10 Separately, no evidence is available showing that the Lands D had itself conducted regular site inspections to ensure that the land is being used for the intended purposes, i.e. in compliance with the user and related conditions of the PRL (see examples in para. 4.3). According to the Lands D's internal instructions, its staff are required to carry out inspections when they receive complaints/referrals or when the PRLs are due for renewal and submissions have to be made to the DLC. In other words, in cases where there were no complaints/referrals during the lease period, inspections would only be conducted at intervals of 15 years.

Common breaches identified by Lands D

4.11 During the current round of renewal exercise (conducted since 2010 or 2011), the Lands D identified common breaches of the Conditions of Grant in its site inspections. Such common breaches included:

- Unauthorised building works (e.g. Example 9)
- Slopes not properly maintained (e.g. Examples 10 and 11)
- Breaches of user restriction (e.g. one club in Example 13)
- Encroachment on Government land

Example 9

Unauthorised building works on one PRL site

1. A club was granted a PRL involving a site area of some 2 hectares for its members' use. According to the Conditions of Grant, except with the prior written approval of the Lands D, the club should not erect upon the lot any building or structure other than the existing buildings or structures erected thereon (see para. 4.3(b)). The Conditions of Grant also stated that the area that might be built within the lot should not exceed 528.6 m^2.

2. The PRL expired in June 2012. During the current round of PRL renewals, the Lands D conducted site inspections in June 2011 and May 2013 respectively. The site inspections revealed that:

(a) ***1st inspection.*** the total built-over area on the PRL site had reached about 1,730 m^2, which had well exceeded the permitted built-over area as stated in the Conditions of Grant by some 1,200 m^2; and

(b) ***2nd inspection.*** 17 structures found on the site were not covered by any approved building plans.

3. The Lands D issued a warning letter in June 2012 and another in April 2013 requiring the club to remove the unauthorised building works. At a meeting in July 2013, the DLC decided that the PRL could be renewed subject to, among other things, the removal of all the unauthorised building works as confirmed by the BD. After consulting the BD, the Lands D considered that 16 of the 17 structures mentioned in paragraph 2(b) above were unauthorised building works under lease. As at September 2013, these 16 structures had neither been approved by the BD (under the Buildings Ordinance) nor the Lands D as required under the Conditions of Grant.

Source: Lands D records

Example 10

Long outstanding Dangerous Hillside Order not rectified

1. One PRL granted to a club was served with a Dangerous Hillside Order (DH Order) by the BD in 1999 under section 27A of the Buildings Ordinance. In 2005, the club applied to surrender the slope in question which was applied for grant by way of lot extension and STT by the adjoining lot owner. The applications were processed by the Lands D until mid-2008 when the applications were withdrawn. In July 2010, the Lands D urged the club to complete the slope maintenance work before the expiry of the lease in December 2011. As at July 2013, the PRL was still under "hold-over" arrangement pending renewal.

2. For the purpose of processing the lease renewal, the Lands D staff carried out a site inspection in June 2012. Subsequent to the site inspection, the Lands D issued a warning letter to the club against the breaches, as follows: (a) the Land Register indicated that a slope within the lot was subject to an outstanding DH Order issued by the BD; and (b) an unauthorised structure was found to have been erected on the lot without the prior written approval of the Lands D. The club was urged to rectify the situation.

3. The follow-up of an DH Order is essentially the responsibility of the BD. At the DLC meeting held in February 2013, the BD informed the DLC that the club had been served with the DH Order since 1999, but there was no rectification. The BD planned to start the slope remedial works in May 2013 and to recover the cost (estimated to be about $6 million) from the club on completion. The works were expected to take 16 months to complete. The DLC decided to defer the renewal of the PRL pending the club's compliance with the DH Order and settlement of the BD's costs of carrying out the remedial works.

Source: Lands D/HAB records

4.12 As mentioned earlier, the Lands D had identified common breaches in its inspections conducted during the current round of renewal exercise. To rectify the breaches, the Lands D had required the private sports clubs concerned to submit timetables informing the Administration as to when the breaches would be rectified (see Example 11). The "hold-over" period would not be extended or the PRL would

not be renewed if the club failed to rectify the breaches according to the timetable or within a reasonable period of time.

Example 11

Slope remedial works would not be completed until May 2014

1. A club was granted a PRL involving a site area of some 6 hectares for use by its members. The PRL expired in June 2012. Two DH Orders were served by the BD on the lot in 2008. At the DLC meeting held in November 2012, the club was reminded to expedite the slope remedial works.

2. The BD has instituted prosecution proceedings pursuant to the DH Orders. In June 2013, the Lands D reminded the club to take immediate action on the rectification works before the Government processed the renewal. The club then submitted an action plan to the Lands D with target to complete the slope remedial works by May 2014. The Lands D consulted the BD which had no adverse comments on the action plan. In September 2013, the BD informed the Lands D that consent for commencement of slope remedial works for one of the DH Orders was issued. The PRL is meanwhile under further "hold-over" arrangement.

Source: Lands D records

Suspected non-compliances with Conditions of Grant

4.13 Without regular site inspections of the land under the PRLs by either the HAB or the Lands D, the Government had not been able to timely detect non-compliance with the Conditions of Grant. Such suspected non-compliances which Audit noted included the following:

- Breaches and possible breaches of user restriction and alienation (e.g. Examples 12 and 13)
- Development plans not approved (e.g. Example 14)
- Green fee for the use of a golf course not approved (e.g. Example 15)

Example 12

Breaches and possible breaches of user restriction and alienation

I. ***Suspected commercial activities/subletting on PRL sites***

1. As mentioned in PART 2, in order to cater for the diverse needs of their members, some private sports clubs have provided various types of non-sports facilities on the land under the PRLs. These include restaurants, bars, sports/gift shops, massage/sauna/karaoke rooms and barber shops. It is probable that the clubs might not be able to operate the wide variety of facilities and services by themselves, and have outsourced the management/operation of such services to third parties.

2. Based on enquiries in July 2013 with a sample of 14 private sports clubs (with the assistance of the Lands D), supplemented by business registration and company search conducted by Audit, it was found that:

(a) in 11 clubs, some 20 social and ancillary facilities (including 10 restaurants, a bar, sports shops, barber shops, massage rooms, a foot reflexology shop, a beauty salon and a gymnasium) were provided by third parties (13 facilities were run by private profit-making companies and the remaining 7 by sole traders or partnership). Some of these third parties had used the clubs' addresses for business registration;

(b) in their audited accounts, some of these clubs reported, as operating income, revenue items such as "restaurant income", "amount received from caterers", "licence fee income", "commission from caterers", "commission income from beauty salon" and "licence fee from catering company", etc. with revenues reaching the highest of $18 million (gross) or $4 million (net) for F&B services provided by third parties. One club reported a property tax provision arising from licensing of property in its audited accounts;

(c) for one club, the operator of a Chinese restaurant was disclosed in the club's audited accounts as a company which was related to one of the club's executive committee members. It was also reported in the audited accounts that the club's income from the restaurant was "based on the higher of a fixed sum or contingent amount based on the sales of the restaurant"; and

Example 12 (Cont'd)

(d) some of the restaurants and a bar of the private sports clubs accept patronage by the public. In particular, the restaurant/bar of two private sports clubs has published advertisements, together with booking forms, on the website of the restaurant/bar.

Audit comments

3. It is not certain whether the above business run by the third parties on the PRL sites has constituted commercial activities or subletting, which are not allowed under the Conditions of Grant (see para. 4.3(a)(i) and (c)).

4. Audit considers that the HAB and the Lands D need to follow up on such activities on the PRL sites, and ascertain whether these activities were contemplated in the Conditions of Grant. Given that Audit's enquiries have covered only a selected number of clubs, the HAB and the Lands D need to conduct similar checks (with the scope expanded, where appropriate) of other clubs on the PRL sites and determine the full extent and propriety of such practices.

5. Audit noted that in the case of one PRL granted to Club 9 (not within the sample of 14 clubs examined in para. 2 above), a lease modification was made in 1986, on payment by the Club of an additional premium, to allow the Club to sublet a portion of the building area on the PRL site to a bank for providing banking services.

II. ***Hosting of wedding banquets/dining functions on one PRL site***

6. The Conditions of Grant disallowed clubs to use the PRL sites for commercial purposes. Following a media report in May 2013 about the use by one club for hosting on the PRL site wedding banquets/dining functions for members of the public, the Lands D conducted an enquiry and found that:

(a) the club had participated in wedding exhibitions for a number of years; and

Example 12 (Cont'd)

(b) the club had hosted some 90 wedding banquets for the public on the PRL site in the past five years. The public would be charged an additional service fee.

7. In September 2013, the Lands D was informed by the club that the latter had ceased to accept public bookings for wedding banquets. In early October 2013, the Lands D informed the club that allowing parties other than those permitted under the PRL to host wedding banquets on the PRL site constituted a breach of the Conditions of Grant.

III. ***Leasing of boat storage/mooring spaces on one PRL site to government departments***

8. According to the Lands D's records, one club has leased out a mooring space for a monthly hiring fee since November 2010 to one government department for berthing a patrol vessel, and has for long been leasing out a boat storage space to another government department for a monthly hiring fee for storing a speedboat.

9. Audit is concerned about the propriety of the club's practice of letting out spaces on the PRL site to government departments. In response to Audit's enquiries and at the Lands D's request, the two government departments had provided the Lands D with their agreements entered with the club. As at September 2013, the Lands D was seeking legal advice to confirm if the agreements were in breach of the Conditions of Grant.

Source: HAB/Lands D records and Audit research

Example 13

Installation of radio base stations on PRL sites without Lands D's approval

1. According to a Practice Note issued by the Lands D in 2002, the installation of a radio base station in any buildings held under leases which should not be used for commercial purpose (e.g. PRL) would be in breach of the Conditions of Grant, since such installation and equipment are considered to be commercial in nature. In such circumstances, a waiver is required to cover such radio base station.

2. Audit noted that at least two private sports clubs had installed radio base stations on rooftops of their club buildings on the PRL sites. However, the two clubs had not applied for any waiver in accordance with the Practice Note issued by the Lands D and the Guidance Note issued by the then Office of the Telecommunications Authority (now the Office of the Communications Authority — OFCA) (Note 1).

3. For one of the two clubs, the Lands D identified such installations only in its inspection in June 2012 when preparing for the current round of PRL renewals, although it had been copied in 2008 and 2009 with the applications submitted by the mobile service operators to OFCA for the installations. Upon receipt of copies of the applications to OFCA, the Lands D had reminded the operators to follow the Lands D's Practice Note in applying for waivers but did not receive such waiver applications from the operators, nor notices from OFCA that their approval had been given. Based on an examination of the club's audited accounts, Audit noted that the club had granted the right to the mobile service operators since 2001 to install and maintain radio frequency equipment on its premises and had received licence fee income every year since then. Subsequent to the inspection in June 2012, the Lands D issued a warning letter to the club requesting it to rectify the breaches. In January 2013, the Lands D conducted another site inspection and found that all radio base stations had been removed.

Example 13 (Cont'd)

4. For another club, the Lands D did not identify such installations in its site inspections to prepare for the current round of PRL renewal, although it had been copied with eight applications to OFCA from different mobile service operators between 2006 and 2012. The Lands D had not followed up the absence of waiver applications from the operators (Note 2). Based on an examination of the club's audited accounts for the year ended 30 June 2012, the club received licence fee income for such installations on the rooftop of the club's premises. In early September 2013, the Lands D advised the club that the latter had committed a breach of the Conditions of Grant and demanded the club to rectify the breach. As at October 2013, the Lands D was still following up with the club.

Source: Lands D records

Note 1: Since 2009, OFCA has operated a "One-stop application procedure" to regulate the installation of radio base stations. According to a Guidance Note issued by OFCA, mobile service operators should declare that the radio base stations are in all respect in compliance with the requirements of relevant government departments including the Lands D in terms of the relevant lease conditions, or they may confirm that they have submitted the necessary temporary waiver applications to the Lands D. The Lands D is responsible for processing the temporary waiver applications when received from the applicants. The OFCA's licence, if issued, will be revoked if the application for the temporary waiver is unsuccessful.

Note 2: In early October 2013, the Lands D informed Audit that it would not seek to verify, upon receiving copies of applications submitted by the mobile service operators to OFCA, if each case would involve a waiver application, but would rely on the operators' observance of the self-declaration system under the Guidance Note issued by OFCA. The Lands D would also process waiver applications when received and would also check sample cases selected by OFCA.

Example 14

Development plans for one PRL site not yet approved by Lands D

1. According to the Conditions of Grant for one PRL, the club was required to submit master plans to the Lands D for approval and, except with the latter's prior written consent, the club should not make any amendments, alterations or variations to the plans (see para. 2.8(e)(ii)).

2. The master plans were submitted to the Lands D in 1995 before the club proceeded with redevelopment of the PRL site. The Lands D indicated that the plans were acceptable in principle subject to, inter-alia, the club resolving an issue over the possible future use of part of the lot for a public project. The issue however remained unresolved while the club continued to submit a number of building plans thereafter. The building plans, although approved by the BD under the Buildings Ordinance, were rejected by the Lands D for the reason that the master plans, which should precede the consideration of the building plans, had not been approved. As at August 2013, the master plans and all building plans submitted by the club since 1995 had not been approved.

3. Although the Lands D had rejected the building plans, the club still proceeded with the building works. Two more F&B outlets, an indoor bowling alley and a children playroom were erected on the PRL site in 2006 without the approval of the Lands D.

4. In September 2013, the Lands D informed Audit that the hurdle affecting the approval of the master plans had been removed (i.e. with the issue over the possible future use of the lot for a public project in paragraph 2 above having been resolved), and it would process the master plans and building plans as soon as possible, in consultation with the HAB.

Source: Lands D records

Example 15

Public use of golf courses on one PRL site

1. In July 1974, ExCo endorsed the granting of one PRL to a club with conditions on the public use of its golf course. In accordance with ExCo's directions, Conditions of Grant were included in the lease stipulating that the club should permit local visitors to use the golf course on the PRL site on weekdays (except public holidays), subject to:

(a) ***Green fees for local visitors.*** Payment of such green fee as might be approved from time to time by the then Secretary for the New Territories (responsibility taken over by the Director of Lands since 1982) and such fee should be comparable to the fees charged by another specified club; and

(b) ***An overall limit of 10% of playing capacity for public use.*** A 10% ceiling of the playing capacity of the golf courses within the lot for the day, but with no limit in the case of persons aged 25 years or under, who might play more often *[The Conditions of Grant have separately contained provisions to govern bookings for use by eligible outside bodies of the club's facilities, including the golf courses, through the CAs, as discussed in PART 3 of this Report]*.

Audit findings

2. Notwithstanding the inclusion of the lease conditions in paragraph 1(a) and (b) above, the Lands D had not, in consultation with the HAB, worked out with the club the procedures to be adopted for approving the green fees to be charged by the club on local visitors, ways to publicise the availability of public access to the golf courses, the booking procedures and the reporting of usage statistics for local visitors.

3. In relation to the lease condition in paragraph 1(a) above, the club had not submitted any green fee proposal for the Lands D's approval for its executive nine golf course. As regards the 18-hole golf course, the club submitted its last green fee proposal in 1994. As a result, the approved green fee remained at $1,000 as approved by the Lands D in 1994. However, in April 2010, in exchange of correspondence on PRL renewal, the club informed the HAB and the Lands D that it charged local visitors at a green fee of $1,800 for the 18-hole golf course from September to May ($1,600 from June to August). In response to the Lands D's enquiry made in September 2013, the club replied that it had not been able to find evidence that submissions for green fee proposal had been made after 1994. The club admitted that the omission was not intentional.

Example 15 (Cont'd)

4. As regards the lease condition in paragraph 1(b) above, Audit noted that the Lands D had not taken any measures to ensure that the club complied with the lease condition. The Lands D only made enquiries in May 2010 when it received a media enquiry on the club's appropriateness of restricting the use of its golf courses to golf players with "handicap card" under the lease conditions. Although legal advice had been sought, the Lands D did not timely follow up, after the media enquiry, to ascertain if the club had complied with the lease condition.

5. Not until mid-September 2013 did the Lands D request the club to provide, among others, evidence to support its compliance with the condition in paragraph 1(b) above, e.g. evidence on: (a) its booking procedures; (b) its statistics of usage by local visitors (different from the usage statistics by Outside Bodies under the approved "opening-up" scheme); and (c) the playing capacity per day of its two golf courses. In the same month, the club provided the Lands D with some of the above information.

6. As at mid-October 2013, the Lands D was still examining the club's information. According to the HAB, the Lands D can consult the HAB on the results of its examination if it requires a steer from a sports policy angle.

Source: Lands D/HAB records

Useful Conditions of Grant adopted in some PRLs, but not in others

4.14 Audit noted in this review that some of the existing PRLs contained useful Conditions of Grant which would facilitate the effective implementation of the Government's policy on PRLs. However, similar conditions were not found in other existing PRLs. Examples include:

(a) Although it is the Government's land policy that PTGs at nominal or concessionary premium should only be made to non-profit-making bodies, and the 1969 and 1979 policy decisions have required that applications for PRLs should only be considered for non-profit-making bodies, Audit found that only a few PRLs have contained explicit provisions to require the lessees to be non-profit-making bodies.

(b) The lessee, having obtained the grant of the lot by private treaty and at nil premium, shall adopt a non-discriminatory membership policy (only explicitly provided in two PRLs — Note).

(c) The grantee shall permit the public to use the golf courses within the lot on every day other than Saturdays, Sundays and public holidays (only adopted in one PRL).

(d) For the avoidance of doubt, it is agreed that for the purpose of this Agreement, (a list of recreational activities) shall be regarded as activities usually associated with the club (only adopted in one PRL).

(e) No debentures issued by the grantee shall be assigned or transferred in any way other than by inheritance only to his or her wife or husband or son or daughter etc, provided that a debenture holder may surrender his debenture to the grantee for such consideration as the grantee shall decide (only adopted in one PRL under the instructions of ExCo).

(f) The lessee shall not alter or add to its M&As in force at the date of this Agreement, without first having obtained the consent in writing of the Director of Lands (not found in seven prevailing PRLs).

Note: As explained by the Lands D, according to the 1979 Report, in order to enforce the principle of adopting a non-discriminatory membership policy (see para. 2.5(c)), private sports clubs on PRL sites were required to change their M&As to meet the criterion. Because all clubs were expected to have complied with the criterion, the 1979 Special Conditions did not include a condition on the non-discriminatory membership policy.

4.15 It is noted that some of the above Conditions of Grant might not have been included in the 1979 Special Conditions as endorsed by ExCo (see para. 2.5(g)), but have been adopted in some of the PRLs subsequently entered into by the Administration due to changes in circumstances. With a view to enhancing the effective implementation of the Government's policy on PRLs in the future, Audit considers that the HAB needs to critically review, in collaboration with the Lands D, the existing PRLs and improve the Conditions of Grant in the long term, taking into account the audit findings in paragraph 4.14.

PART 5: WAY FORWARD

5.1 This PART examines the progress of the current round of PRL renewals and challenges ahead, and makes audit recommendations on the way forward.

Progress of current round of PRL renewals

5.2 As mentioned in paragraph 1.12, 23 PRLs granted to private sports clubs had expired in 2011 or 2012. As at 30 September 2013, 16 of them were still under "hold-over" arrangement pending renewal. In June 2013, the HAB informed the LegCo Panel that in line with the prevailing PRL policy, the Administration was renewing the PRLs for a 15-year term, subject to compliance with conditions including:

(a) the site not being required for a public purpose;

(b) there being no significant breach of lease conditions;

(c) the lessee having a non-discriminatory membership policy; and

(d) the HAB having approved the "opening-up" scheme submitted by the lessee for fulfilling the greater access requirement (as discussed in PART 3).

5.3 In this renewal exercise, the Lands D is responsible for checking the compliance with the two conditions in paragraph 5.2(a) and (b) and will consult the HAB on some breaches as necessary, e.g. in connection with breaches of user or alienation restriction, whereas the HAB is responsible for confirming the two conditions in paragraph 5.2(c) and (d). As at 30 September 2013, the progress on renewals of the 23 PRLs was as follows:

(a) seven PRLs held by private sports clubs had been renewed with all four conditions in paragraph 5.2 having been met; and

(b) of the remaining 16 PRLs:

(i) the HAB confirmed for 13 PRLs that it was not aware of any alteration made to the M&As by the relevant private sports clubs in such a way that would contravene the non-discriminatory membership requirement (i.e. condition (c) in para. 5.2);

(ii) the HAB had approved the "opening-up" schemes submitted (i.e. condition (d) in para. 5.2) for 13 PRLs and given policy support for their renewal; and

(iii) for all 16 PRLs, the Lands D had satisfied through consultation with various B/Ds that the PRL sites were not required for other public uses (i.e. condition (a) in para. 5.2). These B/Ds included the following:

- HAB
- District Offices of the Home Affairs Department
- Plan D
- Highways Department
- Water Supplies Department
- Transport Department
- Civil Engineering and Development Department
- Drainage Services Department
- BD, etc.

For 13 PRLs, renewals had in principle been approved by the DLC for no significant breach of lease conditions (i.e. condition (b) in para. 5.2).

Audit findings

5.4 Audit has the following observations on the current round of PRL renewals:

Way forward

(a) ***A more coordinated approach is called for when assessing the need for public purposes.*** When considering whether a particular PRL should be renewed, the Lands D has been taking a coordinating role and would ask the relevant government departments (see para. 5.3(b)(iii)) whether "the site is required for a public purpose". In most cases, the government departments would reply individually that they had no comment/objection. In the case of the Plan D, it would usually indicate that there was currently no known development proposal affecting the PRL site and the use of the site for recreational purposes was permitted as the subject lot was zoned "Other Specified Uses" on the approved Outline Zoning Plan (Note 27). Audit considers that such an approach adopted to assess whether the PRL site would be required for a public purpose is too fragmented. As pointed out in the 2013 Policy Address, land shortage has seriously stifled social and economic development in Hong Kong, and the Government is committed to increasing the supply of land in the short, medium and long terms. Given the changes in circumstances, Audit considers that a more coordinated approach is required in future to assess whether the PRL sites are or will be required for public purposes. It would appear that the HAB, as the responsible policy bureau for PRLs, needs to work collaboratively with the Development Bureau (as the policy bureau for land use planning), the Lands D and other relevant government departments to assess whether the PRLs due for renewal should be renewed;

(b) ***Upholding a non-discriminatory membership policy.*** The 1979 Government policy prescribes that renewal of existing PRLs should be subject to the club adopting a non-discriminatory membership policy. Among the 13 PRLs in paragraph 5.3(b)(i) of which the HAB had confirmed to the Lands D that it was not aware of any alteration since last renewal having been made to the M&As by the relevant private sports clubs in such a way that would contravene the non-discriminatory membership policy requirement (see para. 2.5(c)), Audit noted that the M&As of one club contained provisions that might call into question its adherence to the non-discriminatory membership policy. In this case, the

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Note 27: *An Outline Zoning Plan is a statutory plan prepared by the Town Planning Board under the Town Planning Ordinance (Cap. 131). It is a statutory plan that shows or makes provision for a number of matters including the land-use zonings, streets, railways and other main communications within planning scheme areas of the Outline Zoning Plan.*

M&As of the club provides that "all persons of Chinese descent shall be eligible for membership". The HAB holds the view, based on legal advice, that the club did not contravene the non-discriminatory membership requirement. Nonetheless, Audit considers that the HAB should review whether the current practice of only assessing alterations that have been made to the M&As since the last renewals is sufficient to ensure that all clubs on PRL sites have duly met the non-discriminatory membership policy requirement as a condition of PRL renewals;

(c) ***Need to closely monitor progress of PRL renewal.*** As at 30 September 2013, only 7 expired PRLs held by private sports clubs had been renewed and the remaining 16 expired leases were still at different stages of processing for renewals (see para. 5.3(b));

(d) ***Need to resolve the issue that part of the PRL site has overlapped with a Country Park.*** Audit found in the case of one PRL, about half of the site was situated in a Country Park (see Example 16 at Appendix D). Whilst the PRL site is used for shooting practices by members of the club, the portion of the site within the Country Park is accessible to the public. There is a need to resolve the issue that part of the PRL site has overlapped with the Country Park; and

(e) ***Need to review the current status of one PRL which had been held over for 17 years.*** Among the 32 PRLs that still existed as at 31 March 2013 (see para. 1.3(a)), one PRL had already expired since 1996 (some 17 years ago). It was currently under "hold-over" arrangement on quarterly basis subject to the same terms and conditions of the lease which expired in 1996 (including the payment of Government rent at $61 a year). In view of the prolonged "hold-over" period, Audit considers that the HAB/Lands D should review the current status of the PRL and critically consider whether the existing "hold-over" arrangement should continue.

Long-term review

5.5 In June 2013, the HAB informed the LegCo Panel that the Administration had begun to prepare for a comprehensive review of the PRL policy, and would take into account such factors as sports development needs, land use considerations, the overall utilisation of the sites, the interests of the lessees (including the private sports club) and their members, and the wider public interest when formulating the way forward for the policy. More recently, the HAB indicated that it had started the review process in early September 2013.

Challenges ahead

5.6 Audit welcomes the HAB's efforts to start the comprehensive review of the PRL policy, and would suggest that the HAB should take into account the findings and recommendations in this Audit Report in its forthcoming policy review. Given that a few PRLs will expire in the forthcoming years (see para. 2.30), the HAB needs to complete its review in a timely manner so that the Government's new policy directions on PRLs would be in place before the expiration of the PRLs. Given that the review will touch on land policy matters, Audit considers that the review should be done in collaboration with the Development Bureau, the Lands D as well as other relevant B/Ds. Furthermore, because this audit review covers only the 32 PRLs granted to 27 private sports clubs (see para. 1.17), the HAB needs to ascertain, in its forthcoming policy review, whether the Administration is facing similar problems and challenges ahead with PRLs granted to NGOs and other organisations (see para. 1.3(b) to (e)).

5.7 Audit notes the following challenges ahead, which the Administration needs to address in its forthcoming comprehensive policy review:

- PRLs have a long development history. While lands held under PRLs are in public ownership and land today is precious and scarce in Hong Kong, consideration should be given to the fact that the private sports clubs have contributed to promoting sports development in Hong Kong and have invested substantial sums in building up the infrastructure and facilities. As mentioned in paragraph 3.32, the situation in Hong Kong is somewhat unique and it is imperative that the Administration should take into account the changing needs and demands of different stakeholders in its forthcoming review of the Government's PRL policy.

- The last comprehensive PRL policy review was conducted in 1979. Over the past few decades, Hong Kong has undergone significant changes on its economic, social and community fronts. It would appear that in its forthcoming PRL policy review, the Administration needs to set out the key principles to be adopted for the renewal of existing PRLs and the granting of new PRLs in future, with a view that public interest will be better served.

Audit recommendations

5.8 **Audit has *recommended* that the Secretary for Home Affairs, as the bureau responsible for PRL policy, should, in collaboration with the Secretary for Development and the Director of Lands, as well as other relevant B/Ds, take into account the audit observations and recommendations in this Audit Report in his forthcoming PRL policy review. In particular, the Secretary should:**

(a) **work out a timetable for the policy review, so that new policy directions on PRLs would be in place before the expiration of a number of PRLs (see paras. 2.30 and 5.6);**

(b) **take into account the needs and demands of different stakeholders (namely, the interests of the private sports clubs on PRLs and their members, and the wider public interest) and strike a proper balance between different objectives (see paras. 3.32 and 5.5 to 5.7);**

(c) **set out key principles to be adopted for the renewal of existing PRLs and the granting of new PRLs in future, with a view that public interest will be better served (see para. 5.7); and**

(d) **conduct a similar review of the 37 PRLs granted to NGOs and other organisations in paragraph 1.3(b) to (e) to ascertain if the Administration is facing similar problems and challenges ahead with these PRLs (see paras. 1.19 and 5.6).**

5.9 **More specifically, Audit has *recommended* that the Secretary for Home Affairs and, where appropriate, the Director of Lands should, in collaboration with other relevant B/Ds (such as the BD and the Plan D):**

PART 2: Government policy decisions in 1969 and 1979

(a) **examine individual PRLs on a case-by-case basis and consider how they should be revised/refined in the light of changes in circumstances, taking into account the key principles set in the forthcoming policy review on PRLs (see paras. 2.9(a), 2.12 and 2.29);**

(b) **set up an effective mechanism to monitor the use of PRL sites, including the requirement to approve the developments on the PRL sites and the conduct of regular site inspections under the enforcement regimes of the HAB/Lands D (see paras. 2.11 and 4.7 to 4.10);**

(c) **draw up planning standards to help assess how PRL sites should in future be reasonably apportioned among sports and non-sports facilities to meet the purpose of the PRLs (see para. 2.12);**

(d) **keep the clubs' membership and their use of the PRL sites under regular review (see para. 2.17);**

(e) **step up controls to ensure that in future, commitments made to ExCo relating to PRL policy are properly followed through for implementation (see para. 2.17);**

(f) **in future cases of sufficient importance, seek the advice of ExCo before granting the PRL (see para. 2.24);**

PART 3: Implementation of the "opening-up" requirement

(g) **keep the approved "opening-up" schemes for individual private sports clubs under regular review and monitor the scheme usage by Outside Bodies (see para. 3.21);**

(h) **closely monitor how the club mentioned in paragraph 3.22 (i.e. the club in Example 3) would implement its proposed "opening-up" scheme on the PRL before approval is granted;**

(i) **issue detailed guidelines to help private sports clubs report the scheme usage in their quarterly reports submitted to the HAB (see para. 3.24);**

(j) **set up a proper mechanism to verify the reported usage of the clubs' sports facilities by Outside Bodies (see para. 3.24);**

(k) **continue stepping up publicity on the clubs' facilities available for use by Outside Bodies and coordinating with the Education Bureau to encourage schools in the vicinity of the clubs to make more use of the clubs' facilities (see paras. 3.26 and 3.29);**

(l) **take note of the obstacles ahead which might discourage Outside Bodies from using the clubs' facilities and take steps to overcome them as far as possible (see para. 3.33);**

PART 4: Monitoring of compliance with lease conditions

(m) **follow up the irregularities/suspected non-compliances with Conditions of Grant reported in Examples 9 to 15 (see paras. 4.11 to 4.13);**

(n) **conduct checks on the suspected commercial/subletting cases identified in Example 12 in paragraph 4.13, with scope expanded where appropriate, to other private sports clubs holding PRLs, and determine the full extent and propriety of such practices;**

(o) **critically review the existing PRLs and improve the Conditions of Grant in the long term, taking into account the useful Special Conditions identified in some of the existing PRLs which may help effective implementation of the Government's policy on PRLs (see paras. 4.14 and 4.15);**

PART 5: Way forward

(p) **work collaboratively with the Secretary for Development and Heads of other relevant government departments to assess whether any of the PRLs due for renewal should be renewed (see para. 5.4(a));**

(q) **review whether the current practice of only assessing alterations that have been made to the M&As since the last renewals is sufficient to ensure that all clubs on PRL sites have duly met the non-discriminatory membership policy requirement (see para. 5.4(b));**

(r) **monitor the progress of the renewals for the 16 expired PRLs mentioned in paragraph 5.4(c), including those clubs which had submitted timetables for rectifying breaches on PRLs in paragraphs 4.11 and 4.12;**

(s) **resolve the issue that part of the PRL site has overlapped with the Country Park in Example 16 (see para. 5.4(d)); and**

(t) **review the current status of the PRL mentioned in paragraph 5.4(e) which had expired since 1996, but was still under "hold-over" arrangement on quarterly basis, and critically consider whether the existing "hold-over" arrangement should continue.**

Response from the Administration

5.10 The Secretary for Home Affairs generally accepts the audit recommendations. He has said that:

In general

(a) in addressing issues related to PRLs, it is necessary to understand clearly the respective roles of the B/Ds with an interest in this matter. For its part, the HAB is responsible for the policy on the grant and renewal of PRLs, in the context of its overall responsibility for sports development policy. There are other issues that have a bearing on PRLs, but which are beyond the purview of the HAB, such as the wider land use policy considerations that govern the award of PTGs (of which PRLs are one example). The land authority accordingly handles such issues, such as the land resumption clauses in the PRLs, without the need to consult the HAB. Furthermore, as a policy bureau, the HAB relies on the relevant executive department, which in the case of PRLs is primarily the Lands D to administer the grant and renewal of the leases and enforce the lease conditions in consultation with the relevant B/Ds as appropriate. The executive department can (and does) approach the policy bureau if it considers that there is a need to seek a broader policy steer on issues relating to PRL administration;

(b) apart from the respective roles of different B/Ds with regard to PRL policy and enforcement of the lease conditions as delineated in (a) above, the Lands D, as the land authority, has been playing a coordinating role in the renewal of PRLs, including confirming whether or not PRL sites are required or will be required for a public purpose. It is not the HAB's place to comment on the renewal or grant of PRLs from a planning and land use policy angle;

(c) the relevant CAs (including the Education Bureau) do not have any comments on the Audit Report and accept the audit recommendations on areas relating to them as CAs;

More specifically

(d) regarding the audit recommendations in paragraph 5.8(a) to (d), the HAB:

(i) accepts the audit recommendation in (a) and is reviewing the timetable for the policy review;

(ii) accepts the audit recommendation in (b) and aims to strike a balance between the needs of different sectors of the community;

(iii) accepts the audit recommendation in (c) in principle, subject to further legal advice; and

(iv) accepts the audit recommendation in (d) and will seek the required manpower to enable the HAB to follow up on this recommendation; and

(e) regarding the audit recommendations in paragraph 5.9(a) to (t), the HAB:

(i) accepts the audit recommendation in (a) and will examine the PRLs on a case-by-case basis, in consultation with the Lands D on practices adopted in other PTGs, and consider the audit recommendation in (a) as appropriate;

(ii) accepts the audit recommendation in (b) and will work with the Lands D to follow up on the audit recommendation in (b);

(iii) accepts the audit recommendation in (c). It may take some time to reach a satisfactory conclusion and the HAB understands that Audit appreciates the difficulties involved;

(iv) accepts the audit recommendations in (d) to (o) in anticipation that the Lands D will follow up on (m) and (n) as appropriate, seek legal advice on (o) and consult the HAB when required. Regarding the audit recommendation in (e), the HAB is currently putting in place an electronic database system to monitor the implementation of the greater access requirement;

(v) accepts the audit recommendation in (p) on the understanding that the implementation of (p) will require formal collaboration from the Development Bureau. The HAB has the policy responsibility for sports development matters and how these affect the PRL policy, but is not in a position to assess the needs of individual PRL sites for "public purposes";

(vi) accepts the audit recommendation in (q) and will review whether the current practice of only assessing alterations that have been made to the M&As since the last renewal of the PRL in question is sufficient to ensure that all clubs on PRL sites have duly met the non-discriminatory membership policy requirement;

(vii) accepts the audit recommendation in (r). The HAB has already approved the schemes for greater access for most of the 16 expired PRLs. The Lands D will follow up on the lease renewal process and consult the HAB as required; and

(viii) generally accepts the audit recommendations in (s) and (t). It is understood that the Lands D will follow up as appropriate and consult the HAB when required.

5.11 The Director of Lands has said that:

(a) regarding the audit recommendations in paragraph 5.8, the Lands D stands ready to contribute to the HAB's forthcoming PRL policy review and will support the HAB in implementing policy decisions arising from the review; and

(b) regarding the audit recommendations in paragraph 5.9(a) to (f) and (m) to (t), the Lands D:

(i) stands ready to contribute to the review in (a) above and will support the HAB in implementing policy decisions arising from the review;

(ii) regarding the audit recommendation in (b), will work with the HAB and other enforcement regimes in examining how best to monitor the uses of land under PRLs. The Lands D will invite the HAB to input in the monitoring and control aspects of lease provisions within its purview;

(iii) regarding the audit recommendation in (c), may include the planning standards, once drawn up by the HAB and subject to the HAB's intention, into the PRLs when the next opportunity arises and/or use the standards in the Government's consideration of any proposals from the clubs and in lease enforcement as appropriate;

(iv) regarding the audit recommendation in (m), will continue to follow up on individual cases of irregularities/suspected non-compliances with Conditions of Grant identified in Examples 9 to 15 in conjunction with the HAB and other B/Ds as appropriate, on the basis that the Lands D will stand by its position with regard to breaches under other statutory enforcement regimes (see para. 4.7);

(v) regarding the audit recommendation in (n), will follow up on identified/suspected commercial/subletting cases in consultation with the HAB and seek legal advice as appropriate;

(vi) will consider the audit recommendation in (o) in conjunction with the HAB;

(vii) regarding the audit recommendation in (p), will stand ready to implement policy decisions on the renewal or otherwise of individual PRLs;

(viii) accepts the audit recommendation in (r) and is working along this direction; and

(ix) will consider the audit recommendations in (s) and (t) in conjunction with other relevant B/Ds. Nonetheless, the Lands D considers that in Example 16 at Appendix D, the land exchange in 2000 was properly granted under due process and with the agreement of relevant departments, including the AFCD as the Country Park Authority, and there was no violation of policy or rules in making this grant.

5.12 The Secretary for Development has said that the Development Bureau stands ready to contribute to the HAB's forthcoming PRL policy review as recommended in paragraph 5.8, and has no fundamental problems with the audit observations and recommendation in paragraphs 5.4(a) and 5.9(p).

Appendix A
(paras. 1.3(a) and 2.14 refer)

32 PRLs granted to private sports clubs

Lessee	PRL	District	Approximate PRL area (Note 1) (hectares)	No. of members (latest known position — Note 2)
Club 1	1	Eastern	1.9	5,000
	9	Sai Kung	1.2	
	13	Southern	0.3	
Club 2	2	Kowloon City	0.9	2,164
Club 3	3		0.6	1,495
Club 4	4		0.6	680
Club 5	5	North	170.6	2,498
	11	Southern	6.7	
Club 6	6	Sai Kung	129.0	2,479
Club 7	7		2.0	1,064
Club 8	8		1.4	969
Club 9	10	Sha Tin	68.2	28,625
	16	Wan Chai	9.2	
Club 10	12	Southern	2.1	2,500
Club 11	14	Southern	0.2	1,214
Club 12	15	Tsuen Wan	6.5	447
Club 13	17	Wan Chai	3.2	49,593
	28	Yau Tsim Mong	0.5	
Club 14	18	Wan Chai	3.0	3,109
Club 15	19		1.8	2,352

Lessee	**PRL**	**District**	**Approximate PRL area (Note 1) (hectares)**	**No. of members (latest known position — Note 2)**
Club 16	20	Wan Chai	1.6	3,393
Club 17	21		1.3	2,914
Club 18	22		1.2	216 (not counting 2,047 dining members)
Club 19	23		1.2	558
Club 20	24		0.5	1,844
Club 21	25	Yau Tsim Mong	2.5	2,102
Club 22	26		2.4	685
Club 23	27		0.7	499
Club 24	29		0.4	330
Club 25	30		0.3	147
Club 26	31		0.2	981
Club 27	32	Yuen Long	3.5	192
		Total	425.7	118,050

Source: HAB records and company search

Note 1: In addition to the granting of PRLs, some of the private sports clubs were also provided with short-term tenancies to operate their club activities.

Note 2: For most of the private sports clubs, membership information was based on latest annual returns/audited accounts they submitted to the Companies Registry. For a few others which had not filed such information with the Companies Registry, their membership information provided to the HAB was used.

Appendix B
(para. 2.23 refers)

Key events leading to the granting of a new PRL in 1999 (August 1996 to September 1999)

Item	Date	Event
(a)	12 August 1996	A Club applied to the Lands D for a PRL to cover "the whole of the land now occupied" by the Club in the North District.
(b)	7 March 1997	The Lands D indicated to the then PELB that should the PRL be granted, the constraints imposed by the golf courses would be a very firm one for the period of the lease (21 years).
(c)	15 March 1997	In response to item (b) above, the PELB pointed out that there seemed to be no intention of developing on a large scale the surrounding land.
(d)	29 July 1997	The Lands D requested the HAB and the then BCSB to consider and advise whether they support the granting of a PRL to the Club.
(e)	15 August 1997	The BCSB sought clarifications on a number of points, including: (i) whether the site in question was considered to be in urban or rural of the New Territories; (ii) the individual merits of the Club's application; and (iii) whether there would be any financial implications for the Government if the STT was converted into a PRL.
(f)	5 September 1997	In response to item (e) above, the Plan D indicated that the site should fall within the New Territories rural areas.

Item	Date	Event
(g)	8 September 1997	In response to (e) above, the Lands D indicated that: (i) the site should fall within the New Territories rural areas; (ii) the merits of the Club's application were that conversion to a PRL would enable the Government to collect increased rental and to get rid of the unfavourable clause to the Government in the old lease; and (iii) if at some future date within the 21-year term, the land or part of it was required for a public project, the Government could resume it under the PRL.
(h)	9 September 1997	The HAB supported the offer of a PRL to the Club.
(i)	13 September 1997	The BCSB supported the PRL proposal.
(j)	17 April 1998	The District Lands Conference approved the granting of a 21-year PRL to the Club.
(k)	18 May 1998	The Club made a request to the Lands D for modifying the Special Conditions including the one relating to the use of the lot for residential purposes.
(l)	1 December 1998	The Lands D sought the HAB's policy support for the modification of the Special Conditions relating to the use of the lot for residential purposes.
(m)	15 December 1998	In response to item (l) above, the HAB indicated that it had no objection from a recreation and sports angle.
(n)	1 September 1999	The PRL was granted to the Club.

Source: Records of the Lands D, the HAB and the Development Bureau

Appendix C
(para. 2.27 refers)

Events leading to recent Government decision for a comprehensive PRL policy review (November 2002 to June 2013)

Item	Date	Event
(a)	November 2002	An oral question was raised at a LegCo meeting about the grant of government land at a nominal land premium to private groups or organisations for use as clubs or clubhouses. The Administration was asked to review the criteria for granting land for sports and recreational uses. The Administration's response was given five years later in item (b) below.
(b)	April 2007	The Administration informed the LegCo Panel that a review of land grants or leases which were still in force would inevitably involve legal and financial issues. With competing priorities, the HAB had no plan to conduct a comprehensive review on the matter, and such leases which were due for renewal would be considered on a case-by-case basis taking into account all relevant factors.
(c)	June 2010	The HAB informed LegCo that as long as the policy principles (set in 1979) were strictly adhered to, the Administration would basically support the clubs' PRL renewal applications.
(d)	May 2011	The HAB briefed the LegCo Panel on the Government's initial conclusions of its review on the extent to which the private sports clubs could be more opened to eligible outside bodies. The HAB considered that although the private sports clubs had already provided some degree of access to outside bodies, there was scope for them to allow more access. Panel Members however expressed support for a policy review on PRLs by the Administration. One Member considered that the Administration should conduct a comprehensive policy review on PRLs. The Panel requested the Administration to revert back on the subject as soon as practicable.
(e)	July 2011	The HAB informed the LegCo Panel that the Administration would conduct a further review of the PRL policy upon the completion of the current lease renewal and the implementation of the "opening-up" arrangements. The LegCo Panel passed a motion calling on the Government, inter alia, to renew the PRLs for three to five years and to review the terms and conditions of the leases to allow greater access to the clubs' facilities by the general public before further renewing the PRLs.

Item	Date	Event
(f)	December 2011	The HAB informed LegCo that in the long run, it was worthwhile to conduct a full-scale review of the policy on PRLs. The HAB also reported for LegCo Members' information the survey results on usage of the clubs' facilities by Outside Bodies in the three years of 2008 to 2010.
(g)	2012	The HAB and the Lands D worked on the current round of PRL renewals, including making "hold-over" arrangements and negotiating with the clubs on opening up more of the clubs' sports facilities to Outside Bodies.
(h)	March 2013	The HAB informed LegCo that the forthcoming policy review, to be conducted after the current round of PRL renewals, would be a full-scale one, taking account of the Government's sports development policy, land use considerations, interests of the PRL lessees' members and the wider public interest.
(i)	June 2013	The HAB provided the LegCo Panel with an update on progress of renewing PRLs and outlined measures which it would take to improve the monitoring of facilities operated under such leases. The HAB informed the LegCo Panel that the forthcoming policy review would take account of factors such as sports development needs, land use considerations, the overall utilisation of the sites, the interests of PRL lessees and their members and the wider public interest when formulating the way forward for the policy. The LegCo Panel passed a motion calling on the Government to establish a monitoring and vetting mechanism for the approval and renewal of lands leased under PRLs, and further open up such lands for use by the public, so as to safeguard public interests.

Source: LegCo records

Appendix D
(para. 5.4(d) refers)

Example 16

Part of a PRL site situated in a Country Park

1. Audit found that some half (involving 3 hectares) of the land held under the PRL granted to a gun club was situated in a Country Park. Instead of erecting a fence to separate the PRL site from other parts of the Country Park, the club only erected warning signs to warn the public not to enter the PRL site as required under the lease condition. In the absence of proper fences erected to separate the PRL site from other areas of the Country Park, Audit is concerned that this may constitute a threat to the safety of the visitors of the Country Park.

2. According to the Lands D's records, the PRL was first granted to the club in 1961, i.e. before the gazettal of the current boundary of the Country Park in 1979. Since 1979, the PRL had been renewed twice (in 1986 and 1995 respectively) and an in-situ land exchange (with reduced site area) was made in 2000 to enlarge the safety buffer zone of the club's shooting range in order to fulfil the licensing safety requirement set by the Hong Kong Police Force. On all three occasions, the Lands D had consulted the relevant B/Ds (e.g. the Agriculture, Fisheries and Conservation Department (AFCD)), and no objections to the renewals of the PRL and the land exchange had been raised. As a result, the encroachment onto the Country Park had remained status quo for over 30 years.

3. During the current round of renewals, the Plan D proposed to regularise the boundary of the lot so that it would be demarcated outside the Country Park. Both the Plan D and the AFCD had the view that the PRL site should not overlap with the Country Park. The AFCD indicated in August 2012 that if it was not possible, due to safety reasons, to exclude the overlapped part of the PRL site from the Country Park, the lot boundary should be revised to minimise the encroachment onto the Country Park. The AFCD also suggested that a Special Condition should be included in the PRL to impose restriction on development and other activities within the Country Park area. However, the AFCD made no additional comment after the Hong Kong Police Force confirmed that revision of the lot boundary was inappropriate taking into account the latest licensing safety requirements. At the DLC meeting held in November 2012, the DLC decided to maintain the existing boundary of the PRL site and considered that it was not necessary to include a clause requiring the club to fence off the lot. As at September 2013, the PRL was still under "hold-over" arrangement.

Source: HAB/Lands D records

Appendix E

Acronyms and abbreviations

AFCD	Agriculture, Fisheries and Conservation Department
Audit	Audit Commission
B/Ds	Bureaux/departments
BCSB	Broadcasting, Culture and Sport Bureau
BD	Buildings Department
CA	Competent authority
CRS	Council for Recreation and Sport
DH Order	Dangerous Hillside Order
DLC	District Lands Conference
ExCo	Executive Council
F&B	Food and beverage
HAB	Home Affairs Bureau
Lands D	Lands Department
LCSD	Leisure and Cultural Services Department
LegCo	Legislative Council
M&As	Memorandum and Articles of Association
m^2	Square metres
NGO	Non-governmental organisation
NSA	National sports association
OFCA	Office of the Communications Authority
Panel	Panel on Home Affairs
PELB	Planning, Environment and Lands Bureau
Plan D	Planning Department
PRL	Private recreational lease
PTG	Private treaty grant
STT	Short term tenancy

CHAPTER 2

Development Bureau
Environment Bureau
Transport and Housing Bureau

Management of roadside skips

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

MANAGEMENT OF ROADSIDE SKIPS

Contents

MANAGEMENT OF ROADSIDE SKIPS

Executive Summary

1. A skip is an open-top container of rectangular shape mostly made of iron. Very often, it is placed at roadside near a construction site or a building under renovation for temporary storage of construction and renovation waste removed from the site or building. Using skips for disposal of construction and renovation waste is an effective means to reduce environmental nuisance and facilitates the construction and fitting-out trades in disposing of such waste in a tidy and orderly manner. However, owing to the lack of a Government monitoring system, roadside skips very often unlawfully occupy public roads, cause obstruction to traffic, and at times pose environmental, hygiene and safety risks to road users. In recent years, there has been a significant increase in the number of public complaints over roadside skips. From November 2009 to June 2013, the Hong Kong Police Force (HKPF) recorded 10 traffic accidents involving skips, in which a total of 15 persons were injured. The Audit Commission (Audit) has recently conducted a review of the Administration's efforts in managing roadside skips (paras. 1.2, 1.5, 1.10 and 1.11).

Problems caused by roadside skips

2. ***Voluntary compliance with skip guidelines.*** In December 2007 and January 2008, the Environmental Protection Department (EPD) and the Transport Department (TD) issued two guidelines (EPD Guidelines and TD Guidelines) for voluntary compliance by skip operators. With a view to reducing problems caused by skip operations, EPD Guidelines focus on measures to reduce environmental problems while TD Guidelines cover measures to reduce public safety risks and obstruction to pedestrian and vehicular traffic. However, the two departments have not conducted any evaluation of the effectiveness of the two Guidelines (paras. 2.2 to 2.4).

3. ***Lack of Government statistics on roadside skips.*** The Government has not set up any system to monitor the placing of roadside skips, and no Government survey has been conducted to ascertain the magnitude of the problem. As a result, the Government does not have any statistics on the number of skip operators, the number of skips in operation and the number of skips placed at roadside every day (para. 2.5).

4. ***Audit road survey and inspections identified many skips.*** From August 2012 to July 2013, with a view to ascertaining the magnitude of the problem caused by roadside skips, Audit conducted a one-year road survey and, additionally, in three Districts conducted one-day inspections and 38-day inspections. Audit survey and inspections identified a total of 470 roadside skips and a number of irregularities (paras. 2.6 to 2.9, 2.12 and 2.13).

5. ***Skip problems revealed in Audit road survey and inspections.*** Audit road survey and inspections revealed that none of the 470 skips had fully complied with EPD and TD Guidelines. In particular, 100% of the skips did not have clear markings indicating that the disposal of domestic, flammable, hazardous and chemical waste was not permitted, 99% were not covered with clean waterproof canvas, 98% were not provided with yellow flashing lights during the hours of darkness, and 39% were placed at "no-stopping" restricted zones. Audit also noted that two locations had continuously been occupied by one to nine skips throughout the 38-day period (paras. 2.12 to 2.18).

6. The issues caused by roadside skips are multi-dimensional, including unlawful occupation of government land, nuisance and obstruction caused to neighbourhood and pedestrians, obstruction and safety risks posed to road users, damage to roads, and environmental and public hygiene problems (para. 4.14).

Government actions on regulating roadside skips

7. In 2004, the Lands Department (Lands D) and the HKPF agreed to take relevant enforcement actions on roadside skips under the Land (Miscellaneous Provisions) Ordinance (Cap. 28 — the Cap. 28 Ordinance) and the Summary Offences Ordinance (Cap. 228) respectively (para. 3.3).

8. ***The Cap. 28 Ordinance not effective in regulating skip operations.*** Between January 2008 and June 2013 (66 months), the Lands D had posted 4,125 notices under the Cap. 28 Ordinance on roadside skips, removed 29 skips (on average one skip in two months), and instituted prosecution action related to one skip. Audit notes that Lands D staff sometimes took a long time before conducting site inspections in response to public complaints on roadside skips. Audit has also found that the Cap. 28 Ordinance is not an effective tool for regulating skip operations because, under the Ordinance, the Lands D needs to provide a 24-hour notice before removal action can be taken on a skip. Therefore, the Government needs to establish a better system to regulate and facilitate skip operations (paras. 3.7, 3.8 and 3.16).

9. ***HKPF actions might not have reflected magnitude of the skip problem.*** From January 2008 to June 2013 (66 months), the HKPF had taken actions to remove 32 skips (on average one skip in two months) and taken prosecution actions in 25 cases. Audit notes that the HKPF would only take removal and prosecution actions on skips causing serious obstruction or imminent danger to the public on roads and pavements. Based on Audit's road survey and inspection results (see paras. 4 and 5 above), the removal of one skip in two months might not have reflected the magnitude of the skip problem (paras. 3.11 and 3.18).

Government system for facilitating skip operations

10. ***Lack of a regulatory system for regulating skip operations.*** As revealed in discussions about roadside skips in past years, relevant trade associations and Government departments were generally in support of introducing a permit system to regulate skip operations. Audit researches also reveal that some overseas authorities have implemented a permit system for the purpose. However, such a regulatory system has not been introduced in Hong Kong. Based on Audit's findings, the Government needs to assess the magnitude of the skip problem and take necessary remedial actions (paras. 4.9, 4.12 and 4.15)

Audit recommendations

11. **Audit recommendations are provided in PART 5 of this Audit Report. This Summary only highlights the key recommendations. Audit has *recommended* that the Secretary for Development, the Secretary for the Environment and the Secretary for Transport and Housing should jointly:**

(a) **conduct a survey to ascertain the magnitude of the skip problem (para. 5.6(a));**

(b) **conduct a review of the effectiveness of the existing enforcement actions on roadside skips taken by the Lands D and the HKPF (para. 5.6(b));**

(c) **formulate strategies and action plans for regulating and facilitating skip operations (para. 5.6(c)(i));**

(d) **assign a Government department to take up the responsibility for regulating and facilitating skip operations (para. 5.6(c)(ii)); and**

(e) **conduct a review to reassess whether the current situation justifies Government actions to introduce a regulatory system to regulate and facilitate skip operations (para. 5.6(d)).**

Response from the Administration

12. The Administration agrees with the audit recommendations (paras. 5.9 to 5.11).

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Use of skips

1.2 A skip is an open-top container of rectangular shape mostly made of iron. Its size ranges from 4 to 7 metres (m) in length, 2 to 3 m in width and 1.5 to 3 m in height. Very often, a skip is placed at roadside near a construction site or a building under renovation for temporary storage of construction and renovation waste removed from the site or building. Upon full loading with such waste or completion of works, a skip will be taken away by a lorry (see Photograph 1), and the waste will be disposed of at:

(a) one of the two public filling areas (in Tseung Kwan O and Tuen Mun) for rocks, concrete, asphalt, rubbles, stones and earth; and

(b) one of the three landfills (in Tseung Kwan O, Tuen Mun and Ta Kwu Ling) for other waste.

Photograph 1

A skip being lifted onto a lorry at Performing Arts Avenue in Wan Chai (June 2013)

Source: *Photograph taken by Audit Commission at 7:59 a.m. on 20 June 2013*

Skip statistics

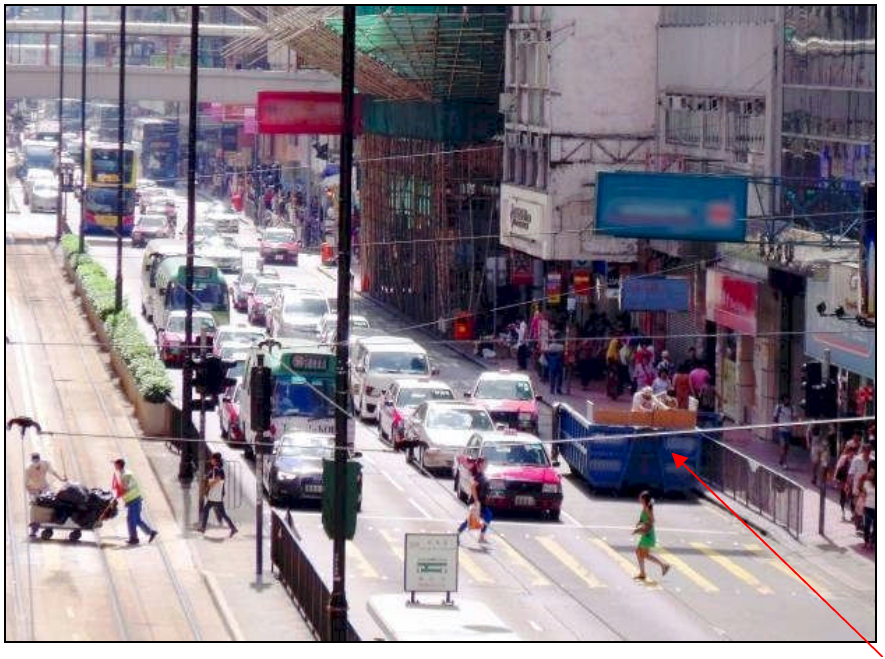
1.3 As early as October 2001, the Hong Kong Police Force (HKPF) raised the issue of skips placed on public roads with the Transport Department (TD) suggesting the setting up of a system to monitor the movement and placing of skips. However, up to August 2013, such a monitoring system had not been set up and no Government bureau and department (B/D) had been tasked with the overall responsibility for regulating skip operations. Moreover, no Government survey had been conducted on the operation of skips and the Government did not have statistics on the number of skip operators, the number of skips in operation, and the number of skips placed on public roads every day. According to road inspections conducted by the Audit Commission (Audit) on a day in May 2013 in three of the 18 District Council Districts (see details in PART 2), 53 skips were found to have been placed on public roads in the three Districts.

Public concerns over skip operations

1.4 From December 2003 to July 2013, Members of the Legislative Council (LegCo) had expressed concerns over roadside skips at seven LegCo meetings. Many District Council Members have also from time to time expressed concerns over the issue. Photograph 2 shows a skip causing obstruction to traffic.

Photograph 2

A skip causing obstruction to traffic at King's Road in North Point (June 2013)



Source: Photograph taken by Audit at 9:42 a.m. on 30 June 2013

1.5 Furthermore, during the period November 2009 (Note 1) to June 2013, the HKPF recorded 10 traffic accidents involving skips (Note 2), in which a total of 15 persons were injured (of whom 4 were seriously injured — Note 3). Photograph 3 shows a traffic accident involving a roadside skip.

Photograph 3

A traffic accident involving a roadside skip at Station Lane in Kowloon City (10 July 2011)

Source: HKPF records

Note 1: *According to the HKPF, it does not have statistics before November 2009 on traffic accidents relating to roadside skips.*

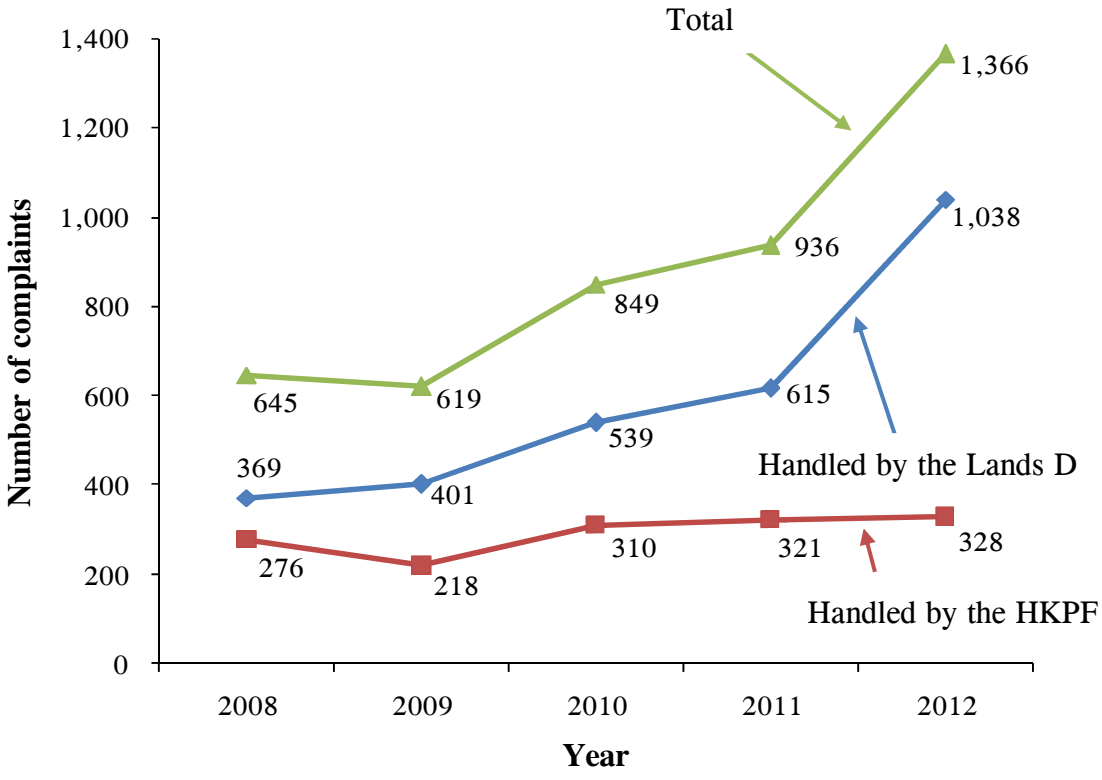
Note 2: *Of these 10 traffic accidents, two took place in 2010, two in 2011, four in 2012, and two in 2013 (up to June).*

Note 3: *According to the HKPF, a person who is injured and admitted to hospital for more than 12 hours is considered as seriously injured.*

1.6 Moreover, in recent years, there has been a significant increase in the number of public complaints over roadside skips which have caused road obstruction and posed safety risks to road users. These complaints are usually lodged with the Integrated Call Centre (commonly known as the Government Hotline 1823), the Lands Department (Lands D), the HKPF, the Environmental Protection Department (EPD), the TD and the Highways Department (HyD). Since no B/D has been tasked with the overall responsibility for regulating skip operations, the pertinent B/Ds have agreed that public complaints received by the Government Hotline 1823 and other B/Ds relating to skips which allegedly have caused serious obstruction or imminent danger to the public would be referred to the HKPF for follow-up actions. Otherwise, the complaints would be referred to the Lands D for necessary follow-up actions from the perspective of unlawful occupation of government land. As shown in Figure 1, the total number of complaints over roadside skips handled by the HKPF and the Lands D increased from 645 in 2008 to 1,366 in 2012, representing a 112% increase.

Figure 1

Complaints over roadside skips (2008 to 2012)



Source: Records of the Lands D and the HKPF

Government guidelines

1.7 In April 2007, as a joint departmental effort to tackle the problems caused by roadside skips, the EPD and the TD convened a meeting with six relevant trade associations, which represented about 80% of the skip operators, to discuss measures for improving the operation of roadside skips. In December 2007, the EPD issued a set of guidelines (EPD Guidelines) focusing on environmental measures on skip operations. In January 2008, the TD also published a set of "Guidelines for Mounting and Placing of Skips" (TD Guidelines) stipulating good practices for skip operations focusing on measures to reduce public safety risks and obstruction to pedestrian and vehicular traffic. As the two Guidelines are not formulated under any legislation, the EPD and the TD cannot compel skip operators to comply with the Guidelines.

Enforcement actions by the HKPF

1.8 Upon receiving a complaint over a roadside skip by the HKPF, it would send a police officer to the site to ascertain whether a skip is causing serious traffic obstruction or imminent danger to the public. In a warranted case, the HKPF would take action to remove the skip, and may take prosecution action against the skip operator concerned under section 4A of the Summary Offences Ordinance (Cap. 228). According to the HKPF, where an article is causing obstruction, inconvenience or endangerment, a police officer can seize the article by the common law power vested in him. From January 2008 to June 2013, the HKPF had taken actions to remove 32 roadside skips, and taken prosecution actions in 25 cases under the Summary Offences Ordinance. The skip operators in all 25 cases were convicted and their fines ranged from $500 to $2,000.

Enforcement actions by the Lands D

1.9 In response to a complaint over a roadside skip, if it is found that a skip is unlawfully placed on government land, Lands D officers would post a notice on the skip to require the land occupier to cease the land occupation before a date as specified in the notice. The Lands D's action taken is in accordance with section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28 — the Cap. 28 Ordinance) which deals with unlawful occupation of unleased land. As prescribed in the Cap. 28 Ordinance, if the occupier complies with the notice requirement, no further action will be taken by the Government. However, if the skip is not removed after expiry of the notice, the Lands D may remove it and may also take prosecution action against the occupier under the Cap. 28 Ordinance. According to the Lands D, it will only take such prosecution action if there is admissible, substantial and reliable evidence that an offence has been committed by an identifiable person. From January 2008 to June 2013, under the Cap. 28 Ordinance, the Lands D had posted 4,125 notices and removed 29 roadside skips, and instituted a prosecution against a skip operator who was acquitted after court proceedings.

Audit review

1.10 Using skips for disposal of construction and renovation waste is an effective means to reduce environmental nuisance and facilitates the construction and fitting-out trades in disposing of such waste in a tidy and orderly manner. Otherwise such waste will be haphazardly placed on roads before disposal. However, owing to the lack of a Government monitoring system, roadside skips very often unlawfully occupy public roads on government land, cause obstruction to vehicular and pedestrian traffic, and at times pose environmental, hygiene and safety risks to road users. In recent years, there has been a significant increase in the number of public complaints on roadside skips (see para. 1.6).

1.11 Audit has recently conducted a review of the Administration's efforts in managing roadside skips. The field audit work started in April 2013 and ended in August 2013. The audit focuses on the following areas:

(a) problems caused by roadside skips (PART 2);

(b) Government actions on regulating roadside skips (PART 3);

(c) Government system for facilitating skip operations (PART 4); and

(d) way forward (PART 5).

Audit has found that there are areas where improvements can be made by the Administration in managing roadside skips, and has made a number of recommendations to address the issues.

Acknowledgement

1.12 Audit would like to acknowledge with gratitude the full cooperation of the staff of the Lands D, the HKPF, the TD, the EPD, the Food and Environmental Hygiene Department (FEHD), the Home Affairs Department (HAD) and the HyD during the course of the audit review.

PART 2: PROBLEMS CAUSED BY ROADSIDE SKIPS

2.1 This PART examines problems caused by roadside skips relating to obstruction to vehicular and pedestrian traffic and safety risks posed to road users.

EPD and TD Guidelines on roadside skips

EPD Guidelines

2.2 In December 2007, after consulting the relevant trade associations, the EPD issued guidelines to the associations requesting skip operators to take the following environmental measures on a voluntary basis when operating roadside skips:

(a) skips shall be covered with clean waterproof canvas;

(b) skips shall have clear markings indicating that disposal of domestic, flammable, hazardous and chemical waste is not permitted; and

(c) operation of skips shall be suspended from 11 p.m. every day to 7 a.m. of the following day, and at all times on public holidays.

TD Guidelines

2.3 In January 2008, again after consulting the relevant trade associations, the TD issued guidelines on mounting and placing of roadside skips for skip operators' compliance on a voluntary basis (see Figures 2 to 6). The salient guidelines include:

(a) all exposed faces of skips shall be painted bright yellow;

(b) company names and emergency contact telephone numbers shall be clearly marked on skips;

(c) reflective strips in alternate red and white of a minimum width of 200 millimetres (mm) shall be affixed at the four vertical edges of skips;

(d) during the hours of darkness, yellow flashing lights shall be attached to each upper corner of skips;

(e) subject to the approval by relevant Government departments (Note 4), skips can be placed at locations such as general lay-bys (except those with bus stops or "no-stopping" zones); and

(f) skips should not be placed at:

(i) public roads with a speed limit exceeding 50 kilometres per hour;

(ii) any roadside within 25 m of junctions, roundabouts, pedestrian crossings and public transport facilities; and

(iii) "no-stopping" restricted zones, bus routes, cul-de-sacs and steep roads.

Note 4: *The names of relevant Government departments are not specified in TD Guidelines.*

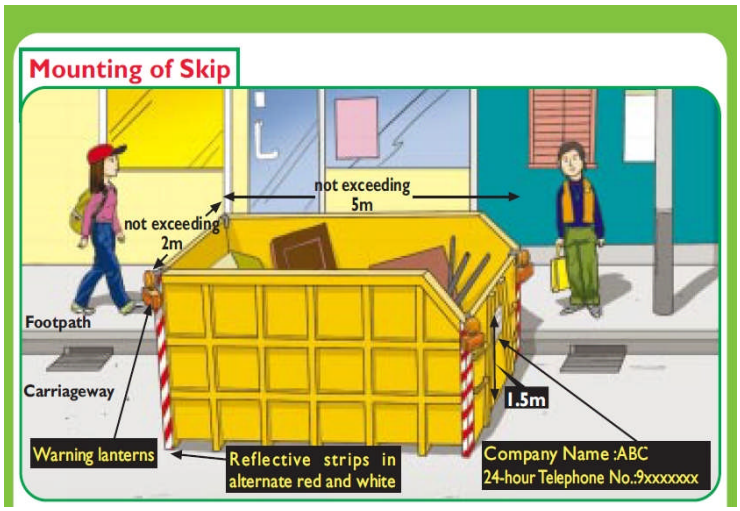
Figures 2 to 6

TD Guidelines on mounting and placing of skips

Figure 2

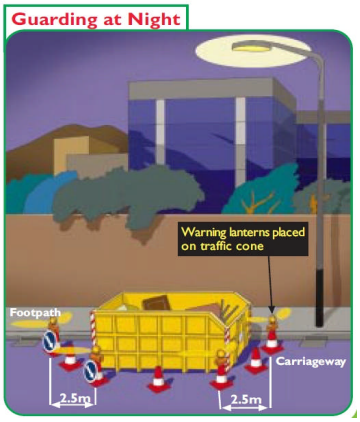
Shall be affixed with reflective strips

Figure 3



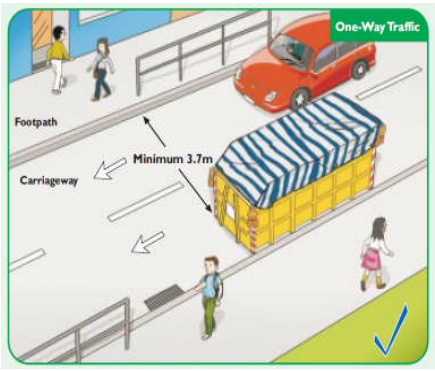
Shall be painted bright yellow and marked with company names and emergency contact telephone numbers

Figure 4



Shall be guarded by traffic cones having yellow flashing lights

Figure 5



Shall keep a minimum carriageway width after placing a skip

Figure 6

Shall not be placed on bus routes

Source: TD records

Areas for improvement

Voluntary compliance with EPD and TD Guidelines

2.4 Owing to the fact that EPD and TD Guidelines on skip operations have not been formulated under any legislation, skip operators are only requested to comply with the Guidelines on a voluntary basis, and the effectiveness of the Guidelines has not been evaluated by the two departments since their issue five years ago. Furthermore, skip operators may not have the incentives to comply with the Guidelines because a skip operator who has fully complied with EPD and TD Guidelines may still be subject to prosecution for causing obstruction under the Summary Offences Ordinance, or unlawful occupation of government land under the Cap. 28 Ordinance (see paras. 1.8 and 1.9).

Lack of Government statistics on roadside skips

2.5 The Government has not set up any system to monitor the placing of roadside skips, and no Government survey has been conducted to ascertain the magnitude of the problem. As a result, the Government does not have any statistics on the number of skip operators, the number of skips in operation and the number of skips placed at roadside every day (see para. 1.3). In December 2003, the Administration informed LegCo that skips were normally placed at roadside for no more than two to three days and their impact on traffic or pedestrians was brief. In Audit's view, the Government needs to conduct a survey to ascertain the magnitude of the skip problem and, if necessary, formulate appropriate strategies and action plans for regulating and facilitating skip operations.

Audit road survey and inspections of roadside skips

2.6 With a view to ascertaining the magnitude of the problem caused by roadside skips, Audit conducted the following two exercises:

(a) a road survey from August 2012 (when commencing Audit research on the subject) to July 2013 carried out by Audit staff en route to and from office and sometimes on non-working days (one-year road survey); and

(b) road inspections carried out in May 2013 by Audit staff in three District Council Districts, namely Hong Kong East, Yau Tsim Mong and Wan Chai (Note 5).

Audit staff prepared a checklist with reference to EPD and TD Guidelines (see Appendix A) for the inspections.

One-year road survey

2.7 From August 2012 to July 2013, five Audit staff spotted a total of 148 skips during the one-year road survey. Photographs were taken for skips identified during the one-year survey and they were included in Audit's samples for examination of their compliance with EPD and TD Guidelines.

Road inspections in May 2013

2.8 For each of the three Districts covered in Audit inspections (see para. 2.6(b)):

(a) Audit staff conducted a road inspection on a day in May 2013 (Note 6) to locate roadside skips in one district (one-day inspections). Upon noting a roadside skip, Audit staff took photographs and checked the skip's compliance with EPD and TD Guidelines by completing a checklist;

(b) in the night time (after sunset) on the same day as in (a) above, Audit staff conducted another inspection of the skips which had been located during day time to ascertain whether or not they had been removed and, if such skips were still on site, checked their compliance with TD Guidelines on attachment of yellow flashing lights on skips during the hours of darkness; and

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Note 5: *From 2008 to 2012, the Lands D had received the highest number of pertinent complaints in these three of the 18 Districts.*

Note 6: *Audit inspections were carried out on 2 May 2013 (Thursday) in Hong Kong East District, 13 May 2013 (Monday) in Yau Tsim Mong District and 21 May 2013 (Tuesday) in Wan Chai District.*

(c) on the third working day after (a) and (b) above, Audit staff conducted a follow-up inspection to ascertain whether the skips identified earlier were still on site.

2.9 Furthermore, in each of the three Districts inspected, Audit staff selected one location (Note 7) and conducted an inspection every day from 24 June to 31 July 2013 (38-day inspections) to ascertain the number of days on which skips were placed at these locations.

2.10 During the one-day inspections in the three Districts (see para. 2.8), Audit staff found a total of 53 roadside skips (see Table 1).

Table 1

Audit's one-day inspections
(2 to 21 May 2013)

District	Date of inspection	Skips found (No.)
Hong Kong East	2 May 2013	11
Yau Tsim Mong	13 May 2013	22
Wan Chai	21 May 2013	20
	Total	53

Source: Audit inspections

Note 7: *The three locations were at King's Road near Cheung Hong Street in Hong Kong East District, Prince Edward Road West near Flower Market Road in Yau Tsim Mong District and Performing Arts Avenue in Wan Chai District.*

2.11 During the 38-day inspections (see para. 2.9), Audit staff found a total of 269 skips (see Table 2).

Table 2

Audit's 38-day inspections
(24 June to 31 July 2013)

Location	Number of days with one or more skips found (Day)	Total skips found in 38 days (Note) (No.)
King's Road, Hong Kong East	34	34
Prince Edward Road West, Yau Tsim Mong	38	38
Performing Arts Avenue, Wan Chai	38	197
	Total	269

Source: *Audit inspections*

Note: *If a skip was found at the same location on two consecutive days, the skip was counted as two skips.*

Skip problems revealed in Audit road survey and inspections

2.12 During the one-day and 38-day inspections carried out from May to July 2013, Audit had identified a total of 322 (53+269) skips. Coupled with the 148 skips found during the one-year road survey (see para. 2.7), Audit had identified a total of 470 skips for examination. Audit examination of these 470 skips revealed that none of them had fully complied with EPD and TD Guidelines (see paras. 2.2 and 2.3). The number and percentages of the 470 skips not complying with each of EPD and TD Guidelines are shown in Appendix A.

2.13 In addition to unlawful occupation of government land, the high rates of non-compliance with EPD and TD Guidelines reveal that roadside skips may have given rise to the following problems:

(a) environmental and hygiene problems (see para. 2.14);

(b) obstruction to vehicular and pedestrian traffic (see para. 2.15);

(c) posing safety risks to road users (see para. 2.16);

(d) prolonged obstruction to vehicular and pedestrian traffic (see paras. 2.17 to 2.19); and

(e) damage to roads (see para. 2.20).

Environmental and hygiene problems

2.14 The following statistics (details in Appendix A) reveal that some environmental and hygiene problems may have arisen in skip operations:

(a) 100% of the skips did not have clear markings indicating that the disposal of domestic, flammable, hazardous and chemical waste was not permitted (see item 2 in Appendix A); and

(b) 99% of the skips were not covered with clean waterproof canvas (see item 1 in Appendix A).

Obstruction to vehicular and pedestrian traffic

2.15 The following statistics (details in Appendix A) reveal that roadside skips may have caused obstruction to vehicular and pedestrian traffic:

(a) 39% of the skips were placed at "no-stopping" restricted zones (see item 11(e) in Appendix A);

(b) 19% of the skips were placed on bus routes (see item 11(f) in Appendix A); and

(c) 33% of the skips caused obstruction, nuisance and safety threats to other road users (see item 12(e) in Appendix A).

Photographs 4 and 5 show examples of skips obstructing vehicular and pedestrian traffic.

Photograph 4

**A skip obstructing vehicular traffic
at Cheung Hong Street in North Point
(July 2013)**

Source: Photograph taken by Audit at 11:16 a.m. on 14 July 2013

Photograph 5

**A skip obstructing pedestrian traffic
at Stone Nullah Lane in Wan Chai
(May 2013)**

Source: Photograph taken by Audit at 8:50 a.m. on 24 May 2013

Posing safety risks to road users

2.16 The following statistics (details in Appendix A) reveal that roadside skips may have posed safety risks to road users:

(a) 99% of the skips were not affixed with reflective strips in alternate red and white of a minimum width of 200 mm at the four vertical edges of the skips (see item 6 in Appendix A);

(b) 98% of the skips were not provided with yellow flashing lights during the hours of darkness (see item 7 in Appendix A);

(c) 56% of the skip users did not comply with associated traffic-related regulations (see item 9 in Appendix A);

(d) 25% of the skips were placed at roadside within 25 m of junctions, roundabouts, pedestrian crossings, public transport facilities, exits and run-ins of developments (see item 11(b) in Appendix A); and

(e) 33% of the skips caused obstruction, nuisance and safety threats to other road users (see item 12(e) in Appendix A).

Photographs 6 and 7 show examples of skips posing safety risks to road users.

Photograph 6

A skip posing safety risks to drivers at King's Road in North Point (June 2013)

Source: Photograph taken by Audit at 10:29 a.m. on 29 June 2013

Photograph 7

A skip posing safety risks to pedestrians at Heard Street in Wan Chai (July 2013)

Source: Photograph taken by Audit at 10:23 a.m. on 11 July 2013

Prolonged obstruction to vehicular and pedestrian traffic

2.17 During Audit's one-day inspections in May 2013, Audit located 53 skips in the three Districts (see Table 1 in para. 2.10). Of these 53 skips, Audit found that 20 (38%) were still placed at the same location (either the same skip or a different one) on the third working day after the first day of inspection.

2.18 Furthermore, Audit's 38-day inspections (see Table 2 in para. 2.11) revealed that two (namely Prince Edward Road West, Yau Tsim Mong and Performing Arts Avenue, Wan Chai) of the three locations had been occupied by one to nine skips on all the 38 days covered in the inspections. For the remaining location (namely King's Road, Hong Kong East), a skip was found on 34 (89%) of the 38 days. Audit also found that one to nine skips had been placed at Performing Arts Avenue every day during the period. In this connection, Audit notes that, during the nine months from August 2012 to April 2013, the Lands D had received a total of 166 public complaints over skips placing at Performing Arts Avenue. Photographs 8, 9 and 10 show examples of such skips.

Photograph 8

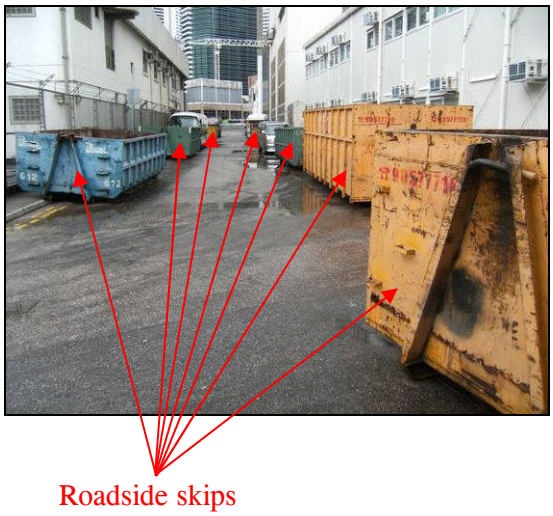
A skip placed at Prince Edward Road West in Mong Kok (July 2013)

Source: Photograph taken by Audit at 6:24 p.m. on 4 July 2013

Photographs 9 and 10

Skips placed at Performing Arts Avenue in Wan Chai (July 2013)

Photograph 9



Photograph 10

Source: *Photographs 9 and 10 taken by Audit at 8:18 a.m. and 8:14 a.m. respectively on 15 July 2013*

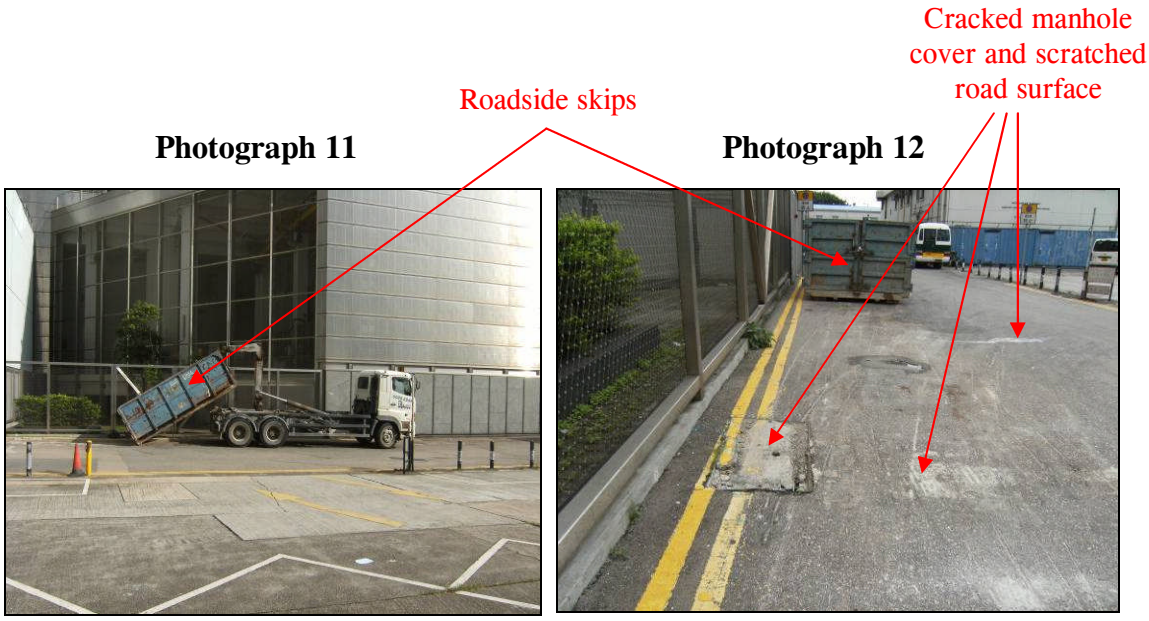
2.19 In Audit's view, the persistent placing of skips over a long period of time at some locations is not desirable as it may obstruct vehicular and pedestrian traffic.

Damage to roads

2.20 According to the HKPF, hauling of skips onto lorries would cause damage to roads. Audit notes that some skips might have caused damage to roads during the hauling and lifting of skips onto lorries, particularly when they were fully loaded with construction waste. Such road damage causes nuisance and inconvenience to road users, and requires Government repairing works and public expenditure. Photographs 11 and 12 show examples of such suspected cases.

Photographs 11 and 12

Suspected damage to road surface caused by skips at Performing Arts Avenue in Wanchai (June 2013)



Source: *Photographs 11 and 12 taken by Audit at 8:08 a.m. on 27 June 2013 and 8:12 a.m. on 28 June 2013 respectively*

Actions required to address the skip problem

2.21 Audit observations in paragraphs 2.12 to 2.20 reveal that Government action is needed to regulate roadside skips. Such skips, apart from unlawful occupation of government land, have caused environmental and hygiene problems, obstruction to vehicular and pedestrian traffic and damage to roads, and posed safety risks to road users. Therefore, the Government needs to take effective actions to address the issue. In order to contain the proliferation of the skip problem, the Government also needs to enhance publicity to remind skip operators of the need to refrain from unlawfully placing skips on public roads.

PART 3: GOVERNMENT ACTIONS ON REGULATING ROADSIDE SKIPS

3.1 This PART examines the actions taken by the Administration on managing roadside skips under the existing legislation.

Roles of various Government departments

3.2 In October 2001, the HKPF suggested that the TD should set up a system to monitor the movement and placing of skips. Thereafter, the two Government departments discussed the issue on some occasions. In May 2003, the "Interim Report on Measures to Improve Environmental Hygiene in Hong Kong" issued by the Team Clean (Note 8) recommended that construction waste temporarily left on pavements or streets should be deposited in skips.

3.3 Since November 2003, the Lands D, the HKPF, the TD and the HAD have discussed street management issues including matters relating to roadside skips at various meetings. In February 2004, subsequent to discussions at an inter-departmental meeting on street management, it was agreed that the Lands D and the HKPF would be responsible for taking enforcement actions on the placing of skips in public places. In January 2007, the Home Affairs Bureau (HAB) set up the Steering Committee on District Administration (Steering Committee — Note 9) to enhance support among Government departments for district management work, including the regulation of roadside skips, as tackling problems caused by roadside skips required effective co-ordination among related Government departments. In 2009, with a view to facilitating swifter enforcement actions on roadside skips, members of the Steering Committee agreed that the Lands D and the HKPF should take on the following roles and responsibilities on managing roadside skips:

Note 8: *Team Clean, set up in May 2003 and disbanded in August 2003, was led by the Chief Secretary for Administration and comprised members from the Home Affairs Bureau, the HAD, the Development Bureau and the Lands D. Its mission was to establish and promote a sustainable and cross-sectoral approach to improving environmental hygiene in Hong Kong.*

Note 9: *The Steering Committee was chaired by the Permanent Secretary for Home Affairs with members including the Commissioner of Police, the Director of Lands and the Commissioner for Transport.*

Lands D's role

(a) for a roadside skip which does not cause obstruction, inconvenience or danger to the public or vehicles but involves unlawful occupation of government land, the Lands D will take actions under the Cap. 28 Ordinance (see para. 1.9). Under section 6 of the Ordinance:

(i) if unleased land is unlawfully occupied, the Lands D may cause a notice requiring the occupation of the land to cease before a date as specified in the notice;

(ii) if the occupation of unleased land does not cease as required by the notice, the Lands D may remove from the land the persons thereon, and take possession of any property or structure on the land; and

(iii) any person occupying unleased land who without reasonable excuse does not cease to occupy the land as required by the notice shall be guilty of an offence and shall be liable on conviction to a fine of $10,000 and to imprisonment for six months; and

HKPF's role

(b) for a roadside skip which causes serious obstruction or imminent danger to the public or vehicles, the HKPF will take removal actions under the common law and prosecution actions under section 4A of the Summary Offences Ordinance. Under the Ordinance, any person setting out or leaving any matter or thing which obstructs, inconveniences or endangers any person or vehicle in a public place (Note 10) shall be liable on conviction to a fine of $5,000 or to imprisonment for three months.

Note 10: *Under the Summary Offences Ordinance, public place is defined as including all piers, thoroughfares, streets, roads, lanes, alleys, courts, squares, archways, waterways, passages, paths, ways and places to which the public have access either continuously or periodically, whether the same are the property of the Government or of private persons.*

3.4 Furthermore, the roles of the EPD and the TD on managing roadside skips are as follows:

EPD's role

(a) in response to a request from the Steering Committee, in December 2007, after consulting skip operators, the EPD issued guidelines to the operators for them to adopt environmental measures on a voluntary basis for operating roadside skips (see paras. 1.7 and 2.2);

(b) according to the EPD, control on the placing of skips on public roads is outside the scope of the Waste Disposal Ordinance (Cap. 354) overseen by the EPD;

TD's role

(c) again in response to a request from the Steering Committee, in January 2008, after consulting skip operators, the TD issued guidelines to the operators for them to adopt good practices on a voluntary basis on mounting and placing of roadside skips (see paras. 1.7 and 2.3); and

(d) according to the TD, as a roadside skip is not constructed or adapted as a vehicle for use on roads, it cannot be regarded as a vehicle for taking enforcement actions under the Road Traffic Ordinance (Cap. 374 — Note 11).

3.5 Moreover, the FEHD (responsible for administering environmental hygiene in public places), the HAD (responsible for co-ordinating work of B/Ds in district administration) and the HyD (responsible for maintenance of public roads) have expressed the following views regarding their roles on regulating roadside skips:

Note 11: *According to section 2 of the Road Traffic Ordinance, a vehicle means any vehicle, whether or not mechanically propelled, which is constructed or adapted for use on roads.*

FEHD's role

(a) if a person using a skip has littered the surrounding area when loading or unloading waste, the FEHD will require the skip owner to clean up the place or it will take appropriate enforcement action under the Public Health and Municipal Services Ordinance (Cap. 132). In the past ten years, the FEHD has not taken any enforcement action against skip owners;

HAD's role

(b) the problems caused by roadside skips are under the purview of the pertinent Government departments. The District Offices of the HAD will consider co-ordinating inter-departmental joint operations if the situation warrants; and

HyD's role

(c) the HyD is responsible for maintenance of public roads and keeping them in safe and serviceable conditions. The HyD does not consider the placing of skips on public roads a problem in the execution of the road maintenance duties. For road damage caused by skip operations, based on the merits of individual cases, recovery action on repair cost from the related skip owners, or persons liable for the damage, can be taken under the common law.

3.6 In February 2009, the Steering Committee considered that, on the grounds that the problems caused by roadside skips might not be serious to the extent warranting a legislative exercise to establish a permit system for regulating roadside skips, the Administration should first work within the existing statutory powers to tighten enforcement against roadside skips, and the setting up of a permit system would not be pursued. In May 2010, the Steering Committee concluded that the problem of roadside skips was in general under control and the issue would not be pursued at the Committee's meetings for the time being.

Government actions

Actions taken by Lands D

3.7 According to Lands Administration Office Instructions (Lands D Instructions — Note 12), District Lands Office (DLO — Note 13) staff should:

(a) take the following actions upon receiving a complaint or a referral on alleged placing of a skip on a public road:

(i) conducting a site inspection not more than two working days from the date of receiving a complaint or a referral (not counting the day on which the complaint or referral is received);

(ii) if a skip is found on site, posting a notice (see Figure 7) on the skip under the Cap. 28 Ordinance requiring the land occupiers to cease the occupation of government land within 24 hours (Note 14) counting from the forthcoming midnight;

(iii) conducting a re-inspection in the morning of the date specified in the notice posted on a skip. If the skip remains in the same location, DLO staff should instruct a Lands D contractor to remove the skip within the same day; and

---

Note 12: *The Lands D has promulgated internal instructions and guidelines in the Lands D Instructions for prevention, detection and rectification of unlawful occupation of government land.*

Note 13: *The Lands Administration Office of the Lands D oversees the following 12 DLOs: DLO/Hong Kong East, DLO/Hong Kong West and South, DLO/Islands, DLO/Kowloon East, DLO/Kowloon West, DLO/North, DLO/Sai Kung, DLO/Sha Tin, DLO/Tai Po, DLO/Tsuen Wan and Kwai Tsing, DLO/Tuen Mun and DLO/Yuen Long.*

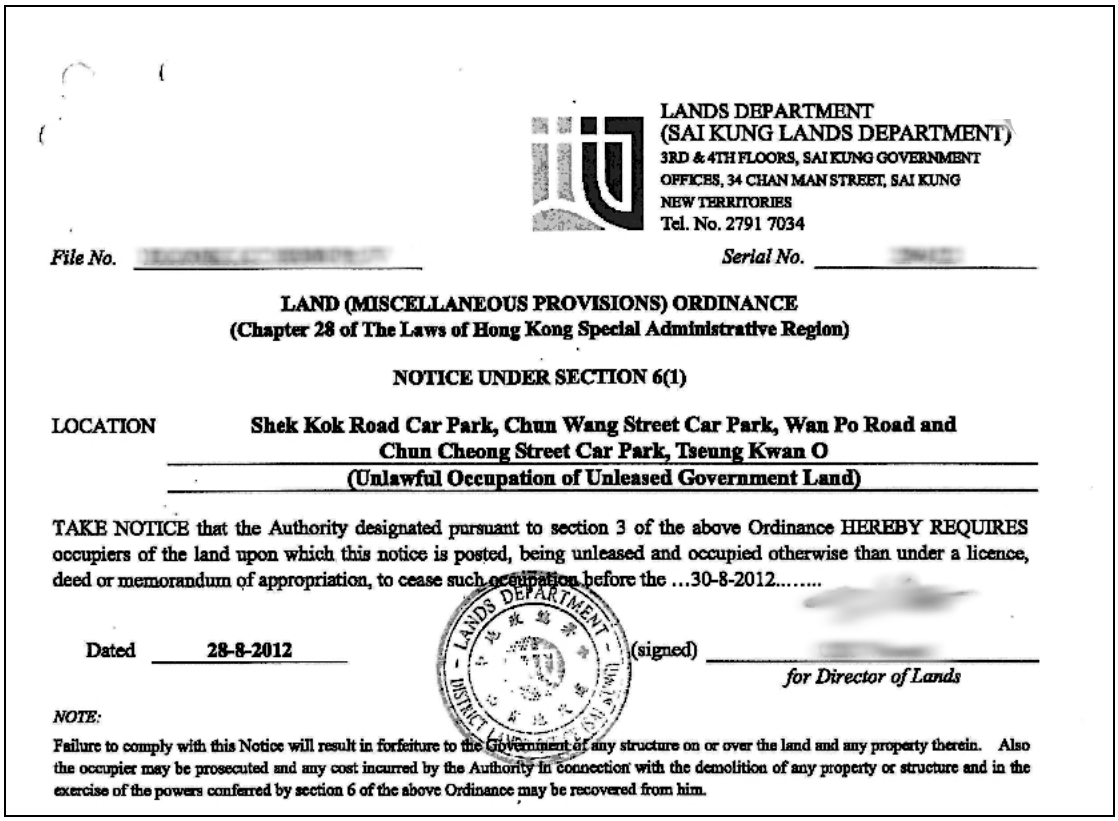
Note 14: *According to the Lands D, the Government should give a land occupier a notice under section 6(1) of the Cap. 28 Ordinance of at least one day (not counting the day on which the notice is posted, or in practice a 24-hour period from midnight to midnight) to cease the occupation. Furthermore, if a Saturday, a Sunday or a public holiday falls within the 24-hour period, the notice period will be extended to a forthcoming working day.*

(iv) if there is admissible, substantial and reliable evidence that an offence has been committed by an identifiable person, taking prosecution actions against the land occupiers under the Cap. 28 Ordinance; and

(b) in each DLO, draw up a list of black spots of unauthorised placing of skips and formulate a patrol programme for the black spots, update the list regularly, and forward the list to the relevant District Councils and District Offices of the HAD to enlist their assistance in monitoring roadside skips placed at the black spots, and referring cases observed to the DLO for actions.

Figure 7

A Lands D notice posted on a skip



LANDS DEPARTMENT
(SAI KUNG LANDS DEPARTMENT)
3RD & 4TH FLOORS, SAI KUNG GOVERNMENT OFFICES, 34 CHAN MAN STREET, SAI KUNG
NEW TERRITORIES
Tel. No. 2791 7034

File No. [redacted] *Serial No.* [redacted]

LAND (MISCELLANEOUS PROVISIONS) ORDINANCE
(Chapter 28 of The Laws of Hong Kong Special Administrative Region)

NOTICE UNDER SECTION 6(1)

LOCATION **Shek Kok Road Car Park, Chun Wang Street Car Park, Wan Po Road and Chun Cheong Street Car Park, Tseung Kwan O**
(Unlawful Occupation of Unleased Government Land)

TAKE NOTICE that the Authority designated pursuant to section 3 of the above Ordinance HEREBY REQUIRES occupiers of the land upon which this notice is posted, being unleased and occupied otherwise than under a licence, deed or memorandum of appropriation, to cease such occupation before the ...30-8-2012.....

Dated **28-8-2012** (signed) [redacted]
for Director of Lands

NOTE:
Failure to comply with this Notice will result in forfeiture to the Government of any structure on or over the land and any property therein. Also the occupier may be prosecuted and any cost incurred by the Authority in connection with the demolition of any property or structure and in the exercise of the powers conferred by section 6 of the above Ordinance may be recovered from him.

Source: *Lands D records*

Remarks: *The second half of this document contained a same notice in Chinese.*

Government actions on regulating roadside skips

3.8 Between January 2008 and June 2013 (66 months), the Lands D had posted a total of 4,125 notices under the Cap. 28 Ordinance on roadside skips, and had removed 29 skips (on average one skip in two months) which had remained on site after expiry of the notices (see Table 3). According to the Lands D:

(a) of the 4,125 skips involved, 4,096 (99%) had been removed before the Lands D's re-inspections. As a result, the pertinent land occupiers had been discharged from further liabilities under the Cap. 28 Ordinance; and

(b) of the 29 non-compliance cases:

(i) the Lands D could only establish in one case admissible, substantial and reliable evidence that an offence had been committed by an identifiable person, and therefore it instituted prosecution action in that case. In the event, the land occupier was acquitted after court proceedings; and

(ii) for the other 28 cases, the Lands D could not take prosecution actions because it could not identify the responsible persons. In the event, the 28 skips were confiscated by the Lands D.

Table 3

Lands D actions on roadside skips
(January 2008 to June 2013)

Year	Complaint or referral handled (No.)	Notice posted (Note) (No.)	Skip removed by owner after posting notice (No.)	Skip removed by Lands D after posting notice (No.)	Prosecution (No. of cases)
2008	369	538	532	6	0
2009	401	532	523	9	0
2010	539	434	433	1	1
2011	615	743	739	4	0
2012	1,038	1,474	1,468	6	0
2013 (up to 30 June)	287	404	401	3	0
Total	3,249	4,125	4,096	29	1

Source: *Lands D records*

Note: *In response to a complaint, DLO staff at times might find no skip being placed on site and hence post no notice under the Cap. 28 Ordinance. However, on other occasions, in response to a complaint, they might find more than one skip and hence post more than one notice.*

Actions taken by HKPF

3.9 Since February 2004, the HKPF has issued and updated internal guidelines on handling complaints relating to skips (HKPF Guidelines). According to HKPF Guidelines issued in September 2012:

(a) skips causing serious obstruction or imminent danger to the public on roads and pavements should be removed;

(b) factors for judging whether a skip is causing serious obstruction and imminent danger include the level of the street lighting, volume of the road traffic and positioning of the skips;

(c) if during a skip removal operation, a person approaches and claims to be the owner of the skip, the police officer should take a statement from him and, if being satisfied with his claim, return the skip to him and take necessary prosecution actions; and

(d) if it is observed that a skip is not causing serious obstruction or imminent danger to the public, the case should be referred to the Lands D for follow-up actions.

3.10 In May 2013, the HKPF informed Audit that a skip would be considered as causing serious obstruction for taking enforcement actions if it was placed on a road:

(a) interfering free flow of traffic and free movement of emergency vehicles; or

(b) where illegal parking would not be tolerated.

3.11 Between January 2008 and June 2013 (66 months), the HKPF had taken actions to remove 32 skips (on average one skip in two months) and prosecute persons involved in 25 cases (see Table 4). All the defendants of the 25 cases were convicted. The fines imposed ranged from $500 to $2,000.

Table 4

HKPF actions on roadside skips
(January 2008 to June 2013)

Year	Complaint or referral handled (No.)	Skip removed by HKPF (Note 1) (No.)	Prosecution (No. of cases)	Warning given to skip operator (Note 2) (No.)	Forfeiture of skip (Note 3) (No. of (cases)
2008	276	9	8	1	0
2009	218	6	6	0	0
2010	310	5	2	1	2
2011	321	6	3	1	2
2012	328	5	5	0	0
2013 (up to 30 June)	139	1	1	0	0
Total	1,592	32	25	3	4

Source: *HKPF records*

Note 1: *In attending to a site in response to a complaint, a police officer might find no skip being placed on site, or a skip which was considered to be not causing serious obstruction or imminent danger to the public. In the latter situation, the police officer might not take removal actions but refer the case to the Lands D for actions (see para. 3.9(d)).*

Note 2: *For a case of unlawful placing of a skip, a police officer might give a warning to the skip operator instead of taking prosecution action.*

Note 3: *If a removed skip was not claimed by its owner, the skip would be forfeited and no prosecution action would be taken.*

Areas for improvement

The Cap. 28 Ordinance not effective in regulating skip operations

3.12 Among the 12 DLOs, Audit selected the DLO/Hong Kong East (Note 15) for examination of the time taken by DLO staff in August 2012 to conduct site inspections in response to 10 public complaints and referrals on roadside skips, and conduct re-inspections after the DLO staff had posted 74 notices (Note 16) under the Cap. 28 Ordinance. Audit notes that DLO staff generally complied with Lands D Instructions on the time for conducting pertinent inspections in response to public complaints and referrals (see para. 3.7(a)(i)). In this connection, after receiving the 10 complaints and referrals, DLO inspections were carried out:

(a) in 5 cases on the same working day;

(b) in 3 cases on the first working day; and

(c) in 2 cases on the second working day.

3.13 Furthermore, after posting the 74 notices, DLO re-inspections were carried out:

(a) in 20 cases on the first working day; and

(b) in 54 cases on the second working day.

Note 15: *The DLO/Hong Kong East had received the highest number of public complaints over roadside skips in the past five years (2008 to 2012).*

Note 16: *In response to a complaint, DLO staff sometimes found more than one skip and hence posted more than one notice.*

3.14 Owing to the fact that DLO staff, except for dealing with emergencies, were only on duty on weekdays and did not conduct inspections or re-inspections on Saturdays, Sundays and public holidays, they sometimes took a long time before conducting the inspections and re-inspections. For example, for the DLO/Hong Kong East in August 2012:

(a) on one occasion, a complaint was received on a Friday, but the DLO staff carried out an inspection on the following Tuesday. There was a lapse of 89 hours (or 3 days and 17 hours) after receiving the complaint; and

(b) on six other occasions, the DLO staff carried out re-inspections 84 to 115 hours (or 4 days and 19 hours) after posting notices.

3.15 In August and September 2013, the Development Bureau (DEVB), the Transport and Housing Bureau (THB), the Lands D and the TD informed Audit that:

DEVB and Lands D

(a) the Lands D had sometimes taken slightly a longer time in taking enforcement actions mainly because the enforcement period for some cases had straddled across Saturdays, Sundays and public holidays, on which DLO staff were off duty except when dealing with emergencies. DLO staff in general did not work outside working hours, and Lands D Instructions were drawn up on the basis of working days;

(b) land administration tools, in particular the Cap. 28 Ordinance, aimed to deal with management and control of land particularly those affecting the Government's land right on a long-term basis (such as unlawful occupation of government land by structures and unauthorised development). Even if land administration tools were to be used to control subjects that took place on land of transient or moving nature like roadside skips, priority would have to be given to unlawful occupation of government land of a more permanent nature. It would be difficult for the Lands D to give priority to managing skips as compared with other land occupation of a more permanent nature like unauthorised development which, if not subject to enforcement, would affect the Government's management and control over land in the long run;

(c) the problems caused by roadside skips had been dealt with as a district management issue, and there was an existing framework for addressing the problems according to their nature through efforts of different Government departments and their respective statutory instruments (see paras. 3.3 to 3.5). From the land administration perspective, roadside skips were not a major type of unlawful occupation of government land. In any event, compared with the safety problems caused by roadside skips, unlawful occupation of government land was not a critical issue in relative terms;

(d) a skip user could easily get around the Lands D's enforcement actions by moving a skip away from its original location before expiry of a notice posted under the Cap. 28 Ordinance and moving it back to the same place again later. Given the nature and focus of the Lands D's land control regime as backed up by the Cap. 28 Ordinance, it would be unlikely that the Lands D could act swiftly enough to tackle the problem of roadside skips. In fact, the Cap. 28 Ordinance was not an effective tool to deal with roadside skips, since a grace period under a notice had to be given (see Note 14 to para. 3.7(a)(ii)). As a matter of fact, posting such notices would allow the subject roadside skip to remain on site during the notice period and no enforcement action could be taken during the period;

(e) the placing of roadside skips might create a number of problems from the district street management angle (such as environmental and hygiene problems and obstruction to pedestrians) or road safety angle (such as safety risks to road users and damage to roads), causing nuisance and sometimes danger to the neighbourhood including pedestrians and road users. Furthermore, skips were placed on roads which were dedicated for public use by vehicular and pedestrian traffic under the daily management of the TD, maintenance by the HyD, and law enforcement by the HKPF. Therefore, any review by controlling and facilitating skip operations, if conducted subsequently, should be conducted in the direction of road management, focusing on the problems of road safety, obstruction to vehicular and pedestrian traffic and damage to roads;

THB and TD

(f) as a skip was by nature a piece of goods or a container with a pile of rubbish rather than a vehicle that could be licensed and regulated under the Road Traffic Ordinance, the TD considered that examining the problem of roadside skips from a licensing angle was not feasible;

(g) road safety, obstruction to vehicular and pedestrian traffic, and damage to roads were not the only problems caused by roadside skips. Other problems caused by roadside skips included environmental and hygiene issues, obstruction to shop fronts and nuisance caused to the neighbourhood; and

(h) under the Road Traffic Ordinance, the TD's main role on road and pavement was traffic management. However, traffic management was one of many road management duties that were shared among different Government departments, such as the Lands D (for controlling illegal occupation of roads and pavements), the HyD (for maintaining roads and pavements) and the FEHD (for cleansing roads and pavements). Hence, the TD was not the sole manager of roads (for vehicular traffic) and pavements (for pedestrian traffic).

3.16 As revealed in paragraphs 3.12 to 3.14, the Lands D at times had taken a long time in taking enforcement actions under the Cap. 28 Ordinance on roadside skips. However, members of the public have legitimate expectations that pertinent Government departments would take actions in a timely manner to address their complaints over placing of skips on public roads that may cause or have caused obstruction to vehicular and pedestrian traffic and posed safety risks to road users. Therefore, the long time taken by DLO staff on some occasions to address public complaints over roadside skips, and to conduct re-inspections after posting notices under the Cap. 28 Ordinance, may not be meeting the public expectations. In Audit's view, applying section 6 of the Cap. 28 Ordinance for regulating skip operations (see para. 3.3(a)) may not be effective. Therefore, the Government needs to establish a better system for regulating and facilitating skip operations (see PART 4).

Black-spot lists not drawn up in many DLOs

3.17 As of June 2013, of the 12 DLOs, only one DLO had compiled a black-spot list of unauthorised placing of skips, and only four DLOs had sought assistance from the pertinent District Councils and the District Offices of the HAD for referring observed skips to the DLOs for land-control actions (see para. 3.7(b)). According to the Lands D, apart from the DLO/Sai Kung, the other 11 DLOs did not consider it necessary to draw up black-spot lists because complaints over roadside skips were not particularly serious in their Districts. However, Audit notes that some locations in DLO/Hong Kong East District have persistently attracted public complaints over skips. For example, during the 12 months from August 2012 to July 2013, three locations in Wan Chai (in DLO/Hong Kong East District) had attracted a total of 252 related public complaints (see Table 5). The Lands D needs to remind DLOs of the need to comply with Lands D Instructions to draw up a list of black spots of unauthorised placing of skips, and formulate a patrol programme for the black spots.

Table 5

Frequent complaints over roadside skips in Wan Chai (August 2012 to July 2013)

Location	Complaint received	Number of days with complaint in the 365 days	
	(No.)	(Day)	(%)
Performing Arts Avenue	166	57	16%
Sharp Street East	60	38	10%
Hung Hing Road	26	14	4%
Total	252	N/A	N/A

Source: Lands D records

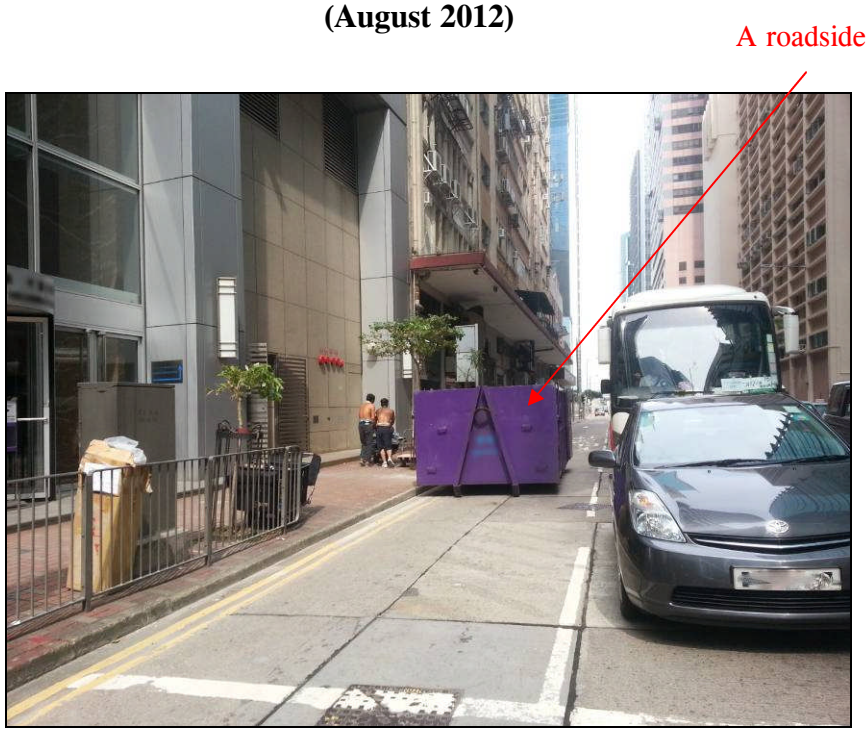
HKPF actions might not have reflected magnitude of the skip problem

3.18 As shown in paragraph 3.11, from 2008 to 2013 (up to June), the HKPF on average had removed one skip in two months. Audit notes that the HKPF will only take removal and prosecution actions on skips causing serious obstruction or imminent danger to the public on roads and pavements. The removal of, on average, one skip in two months might not have reflected the magnitude of the skip problem. In this connection, Audit road survey and inspections from August 2012 to July 2013 revealed that:

(a) 39% of the 470 skips had been placed at "no-stopping" restricted zones (see para. 2.15(a) and Photograph 13) which might cause danger to the public;

Photograph 13

A skip placed in "no-stopping" restricted zone at Java Road in North Point (August 2012)

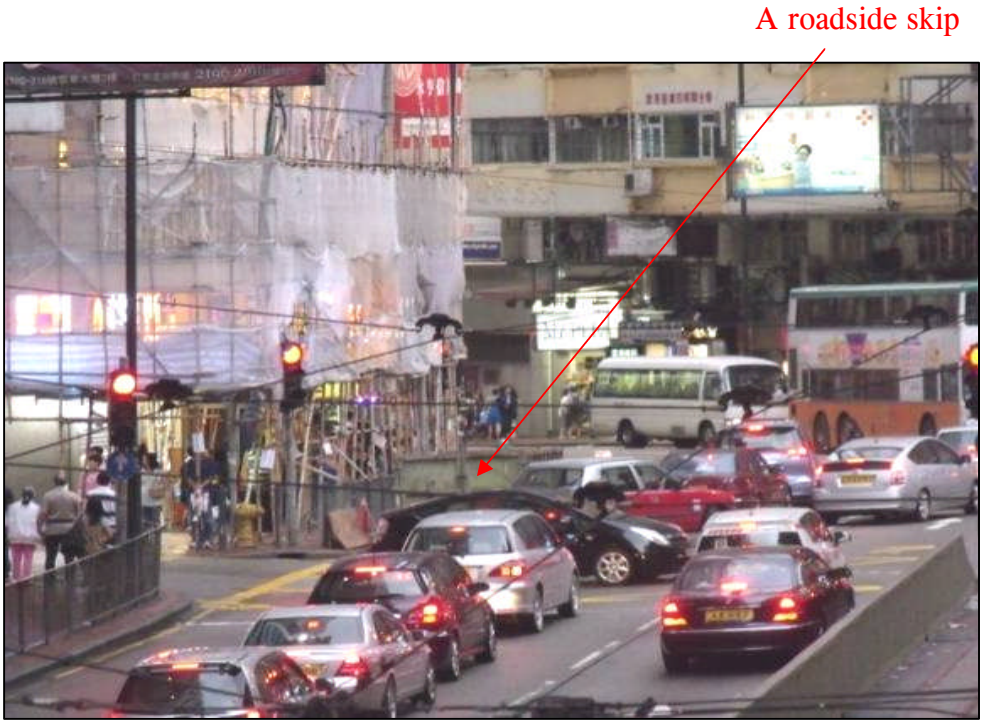


Source: Photograph taken by Audit at 9:45 a.m. on 1 August 2012

(b) 25% of the skips had been placed at roadside within 25 m of junctions, roundabouts, pedestrian crossings, public transport facilities, exits and run-ins of developments (see para. 2.16(d) and Photograph 14) which might cause traffic accidents. Furthermore, 98% of the skips had not been provided with yellow flashing lights during the hours of darkness (see para. 2.16(b));

Photograph 14

A skip placed close to a road intersection at King's Road in North Point (June 2013)



Source: Photograph taken by Audit at 6:25 p.m. on 15 June 2013

(c) 19% of the skips had been placed on bus routes (see para. 2.15(b)). Photograph 15 shows a skip being placed in front of a bus stop which might cause traffic accidents and obstruction to the public; and

Photograph 15

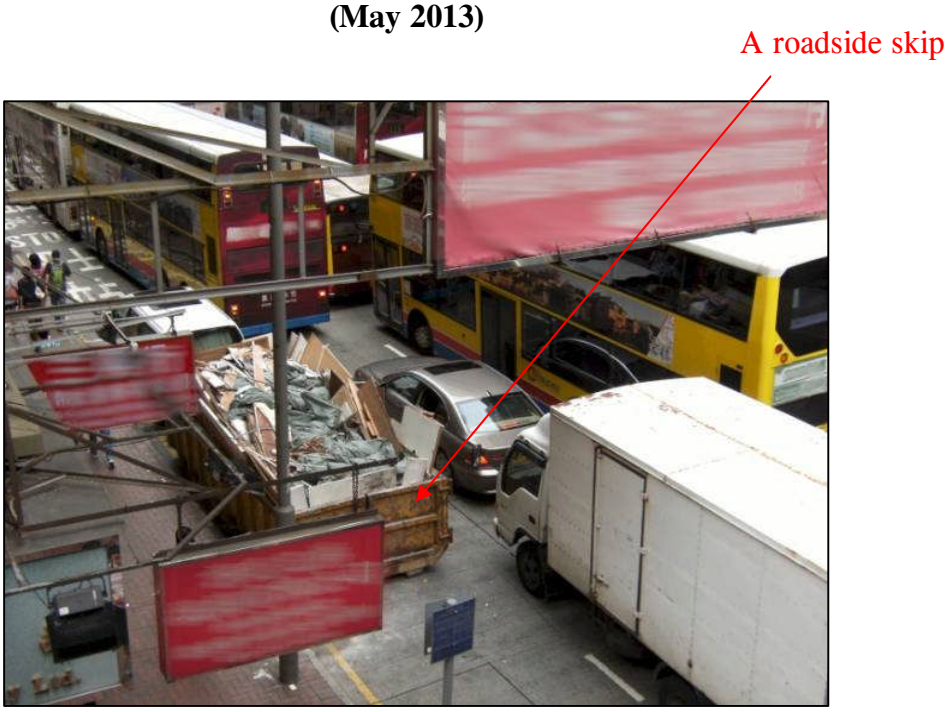
A skip placed in front of a bus stop at King's Road in North Point (May 2013)

Source: Photograph taken by Audit at 4:24 p.m. on 2 May 2013

(d) 92% of the skips had not been placed at general lay-bys (see item 8(a) in Appendix A). Photograph 16 shows a skip being placed occupying a lane of a main road during busy hours which might cause obstruction to the public.

Photograph 16

A skip occupied a lane during busy hours at Hennessy Road in Wan Chai (May 2013)



Source: Photograph taken by Audit at 5:08 p.m. on 21 May 2013

3.19 In September 2013, the HKPF informed Audit that:

(a) for skips causing serious obstruction or posing imminent danger to road users, frontline police officers had taken frequent informal actions, such as contacting the skip owners for the skip removal, and giving verbal warnings to them; and

(b) removal of skips by the HKPF would only be a last resort, which also posed considerable practical difficulties, including the requirement of specialised towing arrangements and space to store the skips securely prior to their return to the owners or disposal in response to a court order.

3.20 In Audit's view, with a view to minimising incidence of skips causing obstruction and danger to the public, the HKPF needs to remind its officers of the need to step up enforcement actions on roadside skips.

Skip removal actions by public officers

3.21 According to the HKPF Guidelines, where a skip is causing obstruction, inconvenience or endangerment, a police officer can seize the skip by the common law power vested in him (see para. 1.8). In Audit's view, the Government needs to seek the Secretary for Justice's advice on, apart from police officers, whether public officers of other relevant Government departments (such as the Lands D, the TD and the EPD) can take effective removal actions on unauthorised roadside skips placed on public roads.

PART 4: GOVERNMENT SYSTEM FOR FACILITATING SKIP OPERATIONS

4.1 This PART examines the Government system for facilitating skip operators in conducting their business in a lawful and well-controlled manner.

Government system

4.2 In Audit's view, the fitting-out and construction trades have a practical need for roadside skips for temporary storage of construction waste. Instead of dumping construction waste on roads, skips can temporarily store waste before its disposal, which helps reduce environmental nuisance and facilitates the disposal of such waste in a tidy and orderly manner. However, there is at present a lack of an effective Government system to regulate and facilitate the lawful operation of skips.

4.3 Audit notes that some fitting-out companies have made provisions in their tender prices (for bidding building renovation works) for meeting fines relating to unlawful placing of skips on public roads for disposing of renovation waste. Audit considers this practice unsatisfactory and there is a need for the establishment of a better Government system for regulating and facilitating skip operations.

4.4 Under section 5 of the Cap. 28 Ordinance, a skip owner may apply for a licence from the Lands D for temporary occupation of government land. The Lands D may, on payment of a prescribed fee by the applicant, issue a licence for temporarily occupying unleased land. In December 2003, the Administration informed LegCo that:

(a) the Lands D might issue a licence to a person for occupation of government land under the Cap. 28 Ordinance; and

(b) skip owners would remove a skip from roadside once it was fully loaded and the skip would not stay very long at roadside. If skip owners needed to go through the application formalities and procedures, many of them would rather not make an application because of the long time required.

From January 2003 to August 2013, the Lands D had not received any application for a licence under the Cap. 28 Ordinance for placing skips on public roads.

Areas for improvement

No licence issued under the Cap. 28 Ordinance for skip operations

4.5 According to the Lands D:

(a) from time to time, it receives applications for the occupation of government land for a short period of time for various purposes such as holding Cantonese operas, staging of variety shows, location film shooting and fund raising activities. These applications do not normally involve occupation of roads; and

(b) at times, an application may cover more than one location and the intended occupation of government land may only involve the setting up of a table or a counter at a location.

4.6 According to Lands D Instructions:

(a) in processing an application, if a site of government land applied for is available for the proposed temporary use, the related Government departments shall be consulted;

(b) if no adverse comments are received from the related Government departments, and the application is not of controversial or unusual nature, licence approval may be granted for a maximum period of one month; and

(c) other than non-profit making ventures, appropriate standard fees shall be charged (Note 17).

Note 17: *For example, for location film shooting, a fee of $4,740 per application for one location up to one month shall be charged, and a further charge of $4,740 for any part of a month thereafter shall apply. Furthermore, if no standard fee is stipulated, a DLO may assess the fee payable.*

Government system for facilitating skip operations

4.7 In September 2013, the DEVB and the Lands D informed Audit that:

(a) generally speaking, the Lands D would grant a licence for occupation of unleased land only if the occupation by a skip would not cause any problem after consultation with relevant Government departments;

(b) the present land control regime as backed up by the Cap. 28 Ordinance was not an effective tool for taking enforcement action on roadside skips without licences. A more fundamental question was how to take effective enforcement actions against skip owners or operators who did not apply for temporary licences for occupying unleased land; and

(c) given the short-term and changing-location nature of skip operations and that non-compliance with the application and permit requirements would have little consequence, skip operators generally had little incentive, if any, to apply for a temporary licence under the Cap. 28 Ordinance. The Administration also needed to take into account the administrative work created for skip operators in applying for a licence and the Government departments concerned in processing an application every time a skip operator sought to occupy government land in a particular location.

4.8 According to the Lands D, it normally takes three to four weeks to issue a licence under the Cap. 28 Ordinance after receiving an application as it needs to process the application and consult the Government departments concerned. In Audit's view, in the event that skip owners or operators are required to apply for licences under the Cap. 28 Ordinance for skip operations, the Lands D needs to conduct a review of the system with a view to streamlining the approval process. Apart from police officers (see para. 3.21), if more public officers, including Lands D officers, can take effective removal actions on unauthorised roadside skips placed on public roads, skip operators may have greater incentives to apply for such a licence.

Lack of a regulatory system for regulating skip operations

4.9 The issue of roadside skips was first discussed among relevant B/Ds as early as 2001 (see para. 1.3). Relevant B/Ds and stakeholders were generally in support of introducing a permit system for regulating skip operations. For example:

(a) ***Relevant trade associations.*** Relevant trade associations indicated at a meeting with the EPD and the TD in April 2007 that they preferred some kind of a permit system for regulating the placing of roadside skips to stepping up enforcement actions by the Government;

(b) ***HKPF.*** At a Steering Committee meeting in May 2007, the HKPF indicated that it welcomed the setting up of a permit system as the HKPF could then trace the skip owners in case of emergencies;

(c) ***Lands D.*** At a Steering Committee meeting in May 2007, the Lands D was invited to explore the feasibility of setting up a permit system as a long-term measure for regulating the placing of roadside skips. At the meeting, the Lands D indicated that an approach requiring skip operators to apply to the authority in advance for placing of skips could be explored with the relevant trade associations;

(d) ***Chief Secretary for Administration.*** In January 2009, at a meeting discussing street management issues with the HAB and the HAD, the Chief Secretary for Administration said that a permit system for regulating the placing of roadside skips should be introduced; and

(e) ***TD.*** At a Steering Committee meeting in February 2009, the TD said that it supported the regulation of roadside skips with a permit system and stood ready to provide professional advice from road safety and traffic management perspectives in processing permit applications.

Government system for facilitating skip operations

4.10 Notwithstanding the general support of introducing a permit system to regulate skip operations, some B/Ds have expressed views on their roles and responsibilities on the issue. For instance, the Lands D considered the placing of roadside skips a road management issue, while the TD considered it a land issue (and not a transport issue), as follows:

(a) ***Lands D.*** The placing of skips involved use of road space, and sometimes metered parking spaces under the TD's management. Therefore, this subject matter should be managed by the TD. Furthermore, a permit system for skip operations and relevant legislation related to road safety and regulation of road traffic would not fall within the Lands D's area of expertise; and

(b) ***TD.*** Roadside skips should not be managed by the TD as skips fell outside the definition of vehicles under the Road Traffic Ordinance. Furthermore, from the traffic management or road safety point of view, a roadside skip was no different from a pile of building materials or unwanted furniture causing obstruction, and was therefore a land issue. The TD would stand ready to provide technical input on processing applications for licences for the purpose. The TD was not prepared to administer the skip-permit system if such a system was to be set up.

4.11 In Audit's view, the introduction of a regulatory system (with appropriate legislative backup, if required) may facilitate the Government to more effectively monitor and control skip operations, including compelling skip operators to comply with EPD and TD Guidelines, and taking more effective enforcement actions.

Overseas experience

4.12 Audit researches reveal that some overseas authorities have implemented a permit system for the purpose. For example:

(a) ***Melbourne of Australia, New York City of the United States of America and Westminster of the United Kingdom.*** A permit with specified conditions issued by the local authority or the transport or highway authority is legally required for placing skips at roadside. The pertinent authority has the discretion to specify conditions in the permit, such as dimensions, colour and lighting of a skip and location of placing a skip. Any person failing to comply with the permit conditions is liable to a fine. Furthermore, Audit notes that, in Westminster of London in the United Kingdom, the time required for applying for a permit for skip operations ranges from 3 to 10 days, depending on the location of placing a skip; and

(b) ***Singapore.*** Instead of a permit system, requirements imposed by the Singapore Land Transport Authority for placing roadside skips are specified in the law. For example, skips are required to be properly maintained and kept in a working condition at all times, and they should not cause or become a cause of danger or inconvenience to persons using the streets. Any person not complying with the requirements is guilty of an offence and is liable to a fine.

4.13 In September 2013, the DEVB and the Lands D informed Audit that:

(a) skips had to be placed at locations accessible to trucks and, hence, such locations were normally roadside or pedestrian pavements; and

(b) if a licensing system was to be established and one of the criteria for licensing was that the skips should not cause road obstruction problems (a major problem currently caused by roadside skips), no permit could be granted and all skips would be subject to enforcement action.

Government system for facilitating skip operations

4.14 The issues caused by roadside skips are multi-dimensional, including unlawful occupation of government land, nuisance and obstruction caused to neighbourhood and pedestrians, obstruction and safety risks posed to road users, damage to roads, and environmental and hygiene problems. However, there is at present no B/D being designated to oversee skip operations. In Audit's view, the pertinent Government policy bureaux responsible for land, transport and environment issues need to assign a Government department to take up the responsibility for managing skip operations.

4.15 Audit notes that the Steering Committee considered at a meeting in February 2009 that neither the Cap. 28 Ordinance nor the Road Traffic Ordinance could provide suitable or adequate legislative backup for introducing a permit system for skip operations. The Steering Committee also considered that the problems caused by skip operations might not be serious to warrant the introduction of new legislation, and concluded in May 2010 that the problem of roadside skips was in general under control (see para. 3.6). In Audit's view, after the lapse of three years, it is an opportune time for the Government to revisit the issue and reconsider the way forward on more effectively regulating skip operations.

PART 5: WAY FORWARD

5.1 This PART examines the way forward for the Government to address the problems of skip operations.

Major audit observations

5.2 In PART 2, Audit has found that roadside skips, without proper regulation, have caused increasing environmental and hygiene problems, obstruction to vehicular and pedestrian traffic and damage to roads, posed safety risks to road users and given rise to unlawful occupation of government land (see para. 2.21). Therefore, the Government needs to take effective actions to resolve the problems.

5.3 In PART 3, Audit has reported that the Lands D sometimes took a long time to take action in response to public complaints over roadside skips. Removal and prosecution actions by the HKPF on roadside skips were not frequent. The two Government departments had removed 61 skips over a period of 66 months from January 2008 to June 2013, i.e. on average one skip in a month. Audit notes that the regulation of roadside skips is not the primary responsibility of the Lands D and the HKPF. The average removal of one skip in a month may not have reflected the magnitude of the skip problem.

5.4 In PART 3, Audit has also reported that the Steering Committee considered in 2009 that the problems caused by roadside skips might not be serious to the extent warranting a legislative exercise to establish a permit system. Furthermore, the Steering Committee concluded in 2010 that the problem of roadside skips was in general under control.

5.5 In PART 4, Audit notes that in the past ten years, the Lands D had not received any application for a licence under the Cap. 28 Ordinance for placing skips on public roads, and the Government had not established a regulatory system for regulating skip operations.

Audit recommendations

5.6 **Audit has *recommended* that the Secretary for Development, the Secretary for the Environment and the Secretary for Transport and Housing should jointly:**

(a) **conduct a survey to ascertain the magnitude of the skip problem (see para. 2.5);**

(b) **conduct a review of the effectiveness of the existing enforcement actions on roadside skips taken by the Lands D and the HKPF (see paras. 3.16 and 3.18);**

(c) **based on the results of (a) and (b),**

(i) **formulate strategies and action plans for regulating and facilitating skip operations (see para. 2.5); and**

(ii) **assign a Government department to take up the responsibility for regulating and facilitating skip operations (see para. 4.14);**

(d) **conduct a review to reassess whether the current situation justifies Government actions to introduce a regulatory system to regulate and facilitate skip operations (see para. 4.14); and**

(e) **seek the Secretary for Justice's advice on, apart from police officers, whether public officers of other relevant Government departments can take effective removal actions on unauthorised roadside skips placed on public roads (see para. 3.21).**

5.7 **Audit has also *recommended* that the Director of Lands should remind DLOs of the need to comply with Lands D Instructions (see para. 3.17) on:**

(a) **drawing up a list of black spots of unauthorised placing of skips**;

(b) **formulating a patrol programme for the black spots; and**

(c) **seeking assistance from pertinent District Councils and District Offices of the HAD for referring observed skips to the DLOs for actions.**

5.8 **Audit has also *recommended* that the Commissioner of Police should remind HKPF officers of the need to step up enforcement actions on roadside skips (see para. 3.20).**

Response from the Administration

5.9 The Secretary for Development, the Secretary for the Environment and the Secretary for Transport and Housing agree with the audit recommendations in paragraph 5.6. The Secretary for the Environment has said that he would work with the Secretary for Development and the Secretary for Transport and Housing in taking forward the follow-up actions.

5.10 The Director of Lands agrees with the audit recommendations in paragraph 5.7. She has said that the DLOs will be reminded of the need to comply with Lands D Instructions on drawing up a list of black spots of unauthorised placing of skips and formulating a patrol programme for the black spots whenever necessary.

5.11 The Commissioner of Police agrees with the audit recommendation in paragraph 5.8. He has said that:

(a) the HKPF supports the introduction of a permit system with legislative backup for monitoring and controlling roadside skips. Without an effective permit system supported by legislation for managing roadside skips, police enforcement action would be compromised; and

(b) in February 2008, the HKPF issued guidelines (attached with TD Guidelines) to all frontline officers on seizure of skips placed on public roads. Since then, the HKPF has regularly reminded its officers of the need to take stringent enforcement actions on roadside skips.

Appendix A
(paras. 2.6, 2.12, 2.14 to 2.16 and 3.18(d) refer)

Compliance of 470 skips with EPD and TD Guidelines (August 2012 to July 2013)

Guideline		Skip not complying with Guideline	
		Number	**Percentage of 470 skips**
I. EPD Guidelines			
1.	Skips shall be covered with clean waterproof canvas.	465	99%
2.	Skips shall have clear markings indicating that disposal of domestic, flammable, hazardous and chemical waste is not permitted.	470	100%
3.	Operation of skips shall be suspended from 11 p.m. every day to 7 a.m. of the following day, and at all times on public holidays.	15	25% of 60 skips (Note 1)
II. TD Guidelines			
Skip mounting			
4.	All exposed faces of skips shall be painted bright yellow.	334	71%
5.	Company names and emergency contact telephone numbers shall be clearly marked on skips.	283	60%
6.	Reflective strips in alternate red and white of a minimum width of 200 mm shall be affixed at the four vertical edges of skips. The strips shall be mounted vertically for a minimum length of 1 m.	464	99%
7.	During the hours of darkness, yellow flashing lights shall be attached to each upper corner of skips. Alternatively, skips shall be guarded by traffic cones and signs, with yellow flashing lights placed on traffic cones.	51	98% of 52 skips (Note 2)

Appendix A
(Cont'd)
(paras. 2.6, 2.12, 2.14 to 2.16 and 3.18(d) refer)

Guideline	Skip not complying with Guideline	
	Number	**Percentage of 470 skips**
II. TD Guidelines		
Skip placing		
8. Subject to the approval by relevant Government departments, skips can be placed at:		
(a) general lay-bys (except those with bus stops or "no-stopping" zones)	432	92%
(b) kerbsides of one-way roads with carriageway width of 6 m or more	9	2%
(c) kerbsides of roads with clear carriageway width of not less than 3.7 m (each flow direction) after placing	10	2%
9. Skip users should comply with associated traffic-related regulations.	264	56%
10. Skips shall be maintained in a clean and tidy condition.	50	11%
11. Skips should not be placed at the following locations:		
(a) public roads with a speed limit exceeding 50 kilometres per hour	0	0%
(b) any roadside within 25 m of junctions, roundabouts, pedestrian crossings, public transport facilities, exits and run-ins of developments	119	25%
(c) obstructing emergency exits	0	0%
(d) road bends	4	1%
(e) "no-stopping" restricted zones	182	39%

Appendix A
(Cont'd)
(paras. 2.6, 2.12, 2.14 to 2.16 and 3.18(d) refer)

Guideline	Skip not complying with Guideline	
	Number	**Percentage of 470 skips**
II. TD Guidelines		
(f) bus routes	90	19%
(g) cul-de-sacs	12	3%
(h) all footpaths and pedestrianised streets (full-time or part-time)	8	2%
(i) steep roads	9	2%
12. Skips should not:		
(a) obscure traffic signs and signals	0	0%
(b) impede road surface drainage	0	0%
(c) block manholes and gullies	0	0%
(d) be placed in rows or groups	144	31%
(e) cause obstruction, nuisance and safety threats to other road users	156	33%

Source: *Audit road survey and inspections*

Note 1: *Audit had not conducted any road survey or inspection between 11 p.m. and 7 a.m. during the period. Moreover, during inspections on public holidays, Audit staff had located 60 skips, of which 15 (25%) were found not complying with this EPD Guideline.*

Note 2: *During Audit's road survey and inspections, Audit staff had located 52 skips during hours of darkness, of which 51 (98%) were found not complying with this TD Guideline.*

Appendix B

Acronyms and abbreviations

Audit	Audit Commission
B/D	Bureau and department
DEVB	Development Bureau
DLO	District Lands Office
EPD	Environmental Protection Department
FEHD	Food and Environmental Hygiene Department
HAB	Home Affairs Bureau
HAD	Home Affairs Department
HKPF	Hong Kong Police Force
HyD	Highways Department
Lands D	Lands Department
LegCo	Legislative Council
m	Metres
mm	Millimetres
TD	Transport Department
THB	Transport and Housing Bureau

CHAPTER 3

Transport and Housing Bureau
Hong Kong Housing Authority
Housing Department

Allocation and utilisation of public rental housing flats

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

ALLOCATION AND UTILISATION OF PUBLIC RENTAL HOUSING FLATS

Contents

ALLOCATION AND UTILISATION OF PUBLIC RENTAL HOUSING FLATS

Executive Summary

1. In Hong Kong, public housing resources are valuable and heavily subsidised. The Hong Kong Housing Authority (HA) is a statutory body established under the Housing Ordinance (Cap. 283) to develop and implement a public housing programme which seeks to achieve the Government's policy objective of meeting the housing needs of people who cannot afford private rental accommodation. The Housing Department (HD) is the executive arm of the HA. As at 31 March 2013, the HA had a stock of about 728,000 public rental housing (PRH) flats, accommodating some 2 million people (710,000 households). The primary role of the HA is to provide subsidised PRH to low-income families. The HA maintains a Waiting List (WL) of PRH applicants. As at 31 March 2013, there were 116,000 general applicants and 112,000 applicants under the Quota and Points System (QPS) on the WL. The Audit Commission (Audit) has recently conducted a review to examine the allocation and utilisation of PRH flats (paras. 1.2, 1.3, 1.4, 1.8, 1.9, 1.12 and 2.2).

Allocation of flats to people in need of public rental housing

2. ***WL management.*** The Housing Department (HD) manages the allocation of PRH flats through a waiting-list system operating mainly on a first-come-first-served basis. The HA's current target is to maintain the average waiting time (AWT) at around three years for general applicants (including both family applicants and single elderly applicants) and around two years for single elderly applicants. The definition of AWT and the basis of its calculation are not disclosed through common channels accessible to the general public. Audit found that 29% of the general applicants on the WL as at 31 March 2013 had waited for 3 years or more. In particular, 7% had waited for 5 years or more (paras. 1.8, 2.2, 2.15 and 2.24).

3. ***QPS.*** The QPS was introduced in September 2005 for the allocation of PRH to non-elderly one-person applicants. Audit found that, as at 31 March 2013, about 30% of the QPS applicants had waited for more than three years. Besides, 57% of the QPS applicants were aged 30 or below. Audit also noted that the feature under the current QPS system of awarding four times as many points to each year of waiting on the WL as compared to each year of age increase at the time of application would encourage more young applicants to apply for PRH early. The QPS has been operating in the current mode for some eight years since its inception. It is an opportune time for the HA to conduct a comprehensive review of the QPS (paras. 2.33, 2.37, 2.38, 2.40 and 2.43).

4. ***Processing of applications.*** To deter false declarations by applicants, annual random checks on income and assets for 300 applications would be conducted by the Public Housing Resources Management Sub-section (PHRM) of the Estate Management Division of the HD. The agreed timeframe for PHRM's investigation was around three months. Audit noted that, in 2012-13, the average case investigation time was more than five months. Unduly long time taken by PHRM for checking would delay the PRH application and flat allocation process for those affected (paras. 2.73 to 2.75 and 2.78).

Maximising the rational utilisation of public rental housing flats

5. ***Unoccupied flats.*** Vacant stock of PRH flats is an important source of supply for allocation to eligible applicants. As at 31 March 2013, there were 12,471 unoccupied flats, representing about 1.7% of the total stock of PRH flats. Among these unoccupied flats, 4,370 were "unlettable", 4,137 were "lettable vacant", and 3,964 were "under offer". 21% of the "lettable vacant" flats had been vacant for one year or more, and 2% for five years or more. Audit also found during site visits to housing estates in mid-2013 that many "under offer" flats had been vacant for more than three months. The refurbishment period (with a target turnaround time of 44 days) for some unoccupied flats was quite long (ranging from 5 months to more than 3 years) (paras. 3.2, 3.4, 3.7, 3.10, 3.12 and 3.13).

6. ***Well-off Tenants Policies.*** To ensure the rational allocation of limited public housing resources, the HA encourages PRH households who have benefited from a steady improvement in their income and assets to return their PRH flats to the HA for reallocation to families that are more in need of the PRH flats. In 1987 and 1996, the HA implemented respectively the Housing Subsidy Policy (HSP) and the Policy on Safeguarding Rational Allocation of Public Housing Resources (SRA), which are collectively referred to as "Well-off Tenants Policies". The HSP requires tenants who have been living in PRH for 10 years or more to declare their household income biennially. Tenants with a total household income exceeding the prescribed subsidy income limits are required to pay additional rent, and declare assets biennially under the SRA to assess their continuing eligibility for PRH. The Well-off Tenants Policies have been implemented for many years. With reference to the Hong Kong 2011 Population Census Report, many PRH households should have already benefited from considerable improvement in their income over the years. However, as at 31 March 2013, only 3% of PRH households were paying additional rent under the HSP. In view of the long WL and the increasing AWT for PRH in recent years, the HA needs to critically review the Policies for further improvements (paras. 3.26 to 3.28, 3.36, 3.37 and 3.39).

7. ***Under-occupation (UO) of PRH flats.*** The HA has put in place a policy requiring a household with living space exceeding the UO standards to move to another PRH flat of appropriate size. Audit found that, as at 31 March 2013, there were 54,555 UO households, representing about 7.7% of the total number of PRH households. Among these UO households, 42,164 (77%) cases had remained unresolved for two years or more. In particular, 9,224 (17%) cases had remained unresolved for 10 years or more. There were also 2,405 UO households each occupying two or more flats. Among them, there were 9 one-person households each occupying two flats, and 224 two-person households each occupying two flats (paras. 3.43, 3.46, 3.50 and 3.57).

Tackling abuse of public rental housing

8. ***Checking of eligibility.*** In applying for PRH, the applicant must submit the completed application form together with the required supporting documents for preliminary vetting of his eligibility for registration. Audit notes that, while supporting documents relating to the declared income and assets are generally required to be submitted, supporting documents relating to investments and deposits are exempted. Besides, the HD only selects a sample of 300 applications a year for in-depth checking, representing a small percentage of applications on the WL (paras. 4.2, 4.4 and 4.11).

9. ***Processing of income/asset declarations.*** Under the HSP (see para. 6 above), tenants are required to declare the household income in an income declaration form. The majority of these HSP cases (over 98%) are processed by the estate offices. Under the SRA, tenants are required to declare the household assets in an asset declaration form. PHRM is responsible for reviewing all SRA cases and investigating doubtful HSP cases referred by the estate offices, as well as the randomly selected HSP cases. In the past five years, on average, PHRM checked some 3,700 SRA/HSP cases a year, and some 650 cases (18%) were found with false declarations. The false declaration rate appeared to be high (paras. 4.20, 4.21, 4.23, 4.26 and 4.27).

10. ***Enforcement actions.*** Applicants for PRH and existing PRH tenants are required to declare their household income and/or assets and family particulars in order to assess their eligibility or continuing eligibility under various housing management policies. Prosecution action might be taken against false declaration cases. Audit noted that the prosecution rate was low in the past two years, mainly due to lack of sufficient evidence. There is a need to enhance legal training to equip HD staff with the general knowledge of gathering sufficient evidence and handling false declaration cases (paras. 4.53, 4.63 and 4.67).

Way forward

11. In September 2012, the Government set up a Steering Committee, chaired by the Secretary for Transport and Housing, to conduct the Long Term Housing Strategy (LTHS) Review. In September 2013, the Committee produced a consultation document on the LTHS with proposed recommendations for three months' public consultation. Audit considers that the Administration needs to take into account Audit's observations and recommendations when examining the way forward for the LTHS Review (paras. 1.10, 5.5 and 5.7).

Audit recommendations

12. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Housing should:**

Allocation of flats to people in need of PRH

(a) **enhance the transparency and accountability of the HD's management of the WL for PRH by, for example, publicising the definition of AWT and the basis of its calculation (para. 2.31(a)(i));**

(b) **conduct investigations periodically to identify long-outstanding cases in which general applicants have waited on the WL for over 3 years (para. 2.31(b));**

(c) **conduct a comprehensive review of the QPS (para. 2.50(a));**

(d) **consider screening out ineligible QPS applicants from the WL on a periodic basis (para. 2.50(b));**

(e) **take measures to expedite PHRM's efforts to conduct the random checking of income and assets (para. 2.79(g));**

Maximising the rational utilisation of PRH flats

(f) **step up the monitoring of unoccupied flats classified as "under offer" or unlettable (para. 3.24(a));**

(g) **critically review the Well-off Tenants Policies to see whether the various parameters of the HSP and the SRA can be fine-tuned for further improvements (para. 3.40(b));**

(h) **step up the HD's efforts in tackling the UO issue, paying particular attention to long-outstanding UO households and households each occupying two or more flats (para. 3.62(a) and (d));**

Tackling abuse of PRH

(i) **consider requiring applicants to submit supporting documents for major types of declarable assets at the date of application for preliminary vetting (para. 4.17(a));**

(j) **keep under review the rates of detected false declarations under the HSP and the SRA, and strengthen strategy to deter false declarations (para. 4.35(b)); and**

(k) **analyse periodically the reasons for the low prosecution rates for false declaration cases and take corrective actions as needed (para. 4.68(c) and (d)).**

13. **Audit has also *recommended* that the Secretary for Transport and Housing should take on board the audit observations and recommendations in this Audit Report in taking forward the LTHS Review (para. 5.8).**

Response from the Administration

14. The Secretary for Transport and Housing, and the Director of Housing agree with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Hong Kong Housing Authority

1.2 The Hong Kong Housing Authority (HA — Note 1) is a statutory body established under the Housing Ordinance (Cap. 283) to develop and implement a public housing programme which seeks to achieve the Government's policy objective of meeting the housing needs of people who cannot afford private rental accommodation. The HA sets out in its mission statement that it strives to ensure cost-effective and rational use of public resources in service delivery and allocation of housing assistance in an open and equitable manner.

1.3 The primary role of the HA is to provide subsidised public rental housing (PRH) to low-income families. It plans, builds, manages and maintains PRH flats. As at end of March 2013, the HA had a stock of about 728,000 PRH flats in 204 estates, accommodating some 2 million people (710,000 households) or 30% of Hong Kong's total population. The PRH rent is inclusive of rates, management costs and maintenance expenses. As at 31 March 2013, PRH rents ranged from $290 to $3,880 per month with an average rent of about $1,540 per month. The operating income and expenditure for PRH in 2013-14 are estimated at $13.7 billion and $14.7 billion respectively (i.e. an operating deficit of about $1 billion).

Housing Department

1.4 The Housing Department (HD), as the executive arm of the HA, provides secretarial and executive support to the HA and its committees. The HD also supports the Transport and Housing Bureau in dealing with all housing-related

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Note 1: *As at end of March 2013, the membership of the HA comprised 26 non-official members and four official members. Appointments are made by the Chief Executive of the Hong Kong Special Administrative Region. Six standing committees together with a number of sub-committees are formed under the HA to formulate and oversee policies in specified areas.*

policies and matters. The HD is headed by the Permanent Secretary for Transport and Housing (Housing) who also assumes the office of the Director of Housing. To help forge closer collaboration between the HA and the Government in the provision of public housing services, the Secretary for Transport and Housing and the Director of Housing have respectively assumed the positions of the Chairman and Vice-chairman of the HA. Appendix A shows an extract of the organisation chart of the HD.

1.5 The HD is responsible for the provision of PRH including, among others, the allocation and management of PRH flats. As at 31 March 2013, out of a strength of 8,500 staff in the HD, about 5,000 staff (mainly in the Strategy Division and the Estate Management Division — EMD) were responsible for the allocation and management of PRH flats.

Strategic objectives on PRH

1.6 The HA's strategic objectives on PRH are to:

(a) facilitate the cost-effective provision of quality PRH; and

(b) maximise the rational allocation and eliminate abuse of housing resources with a view to enhancing the turnover of PRH.

Public concern about the long waiting list of PRH applicants

1.7 Housing has always been a public concern for Hong Kong people. In particular, the community has attached great importance to addressing the housing needs of various sectors, such as the low-income group, first-time home buyers, etc.

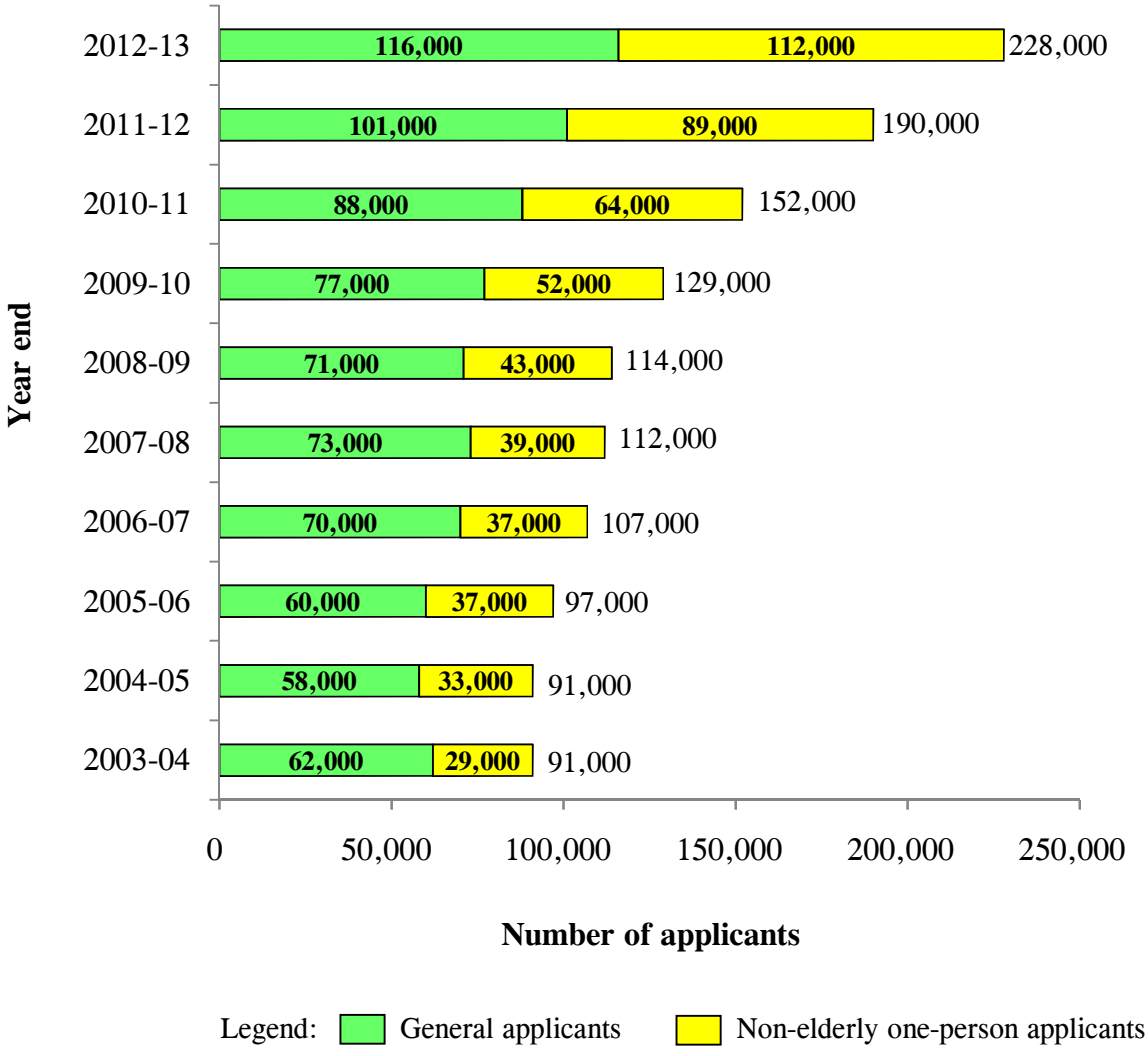
1.8 The HA maintains a Waiting List (WL) of PRH applicants. The HA's current target is to maintain the average waiting time (AWT) at around three years for general applicants (including both family applicants and single elderly applicants) and around two years for single elderly applicants (i.e. those aged 60 or above). Non-elderly one-person applicants are placed under the Quota and Points System (QPS). No target is set on the AWT for QPS applicants.

1.9 The increasing number of PRH applications in recent years has caused great concern among the public. As stated in the Policy Address of January 2013, "today we see undergraduates applying for PRH, and the number of WL applications has exceeded 200,000". As at 31 March 2013, there were a total of about 228,000 applicants on the WL for PRH, reaching an all-time high. Among them, 116,000 (51%) were general applicants and 112,000 (49%) were QPS applicants (Note 2). In the past 10 years, the total number of PRH applications increased by about 1.5 times, while the number of QPS applications increased by about three times (see Figure 1 for details). In particular, the percentage of QPS applications increased from 32% of total applications in 2004 to 49% in 2013.

Note 2: *According to the HD, these are two separate queues under the WL, and the applicants under each queue have different conditions and are subject to different allocation arrangements (see para. 1.8). As such, they should be distinguished from each other.*

Figure 1

Number of applicants on the WL for PRH
(2003-04 to 2012-13)



Source: Audit analysis of HD records

Review of the Long Term Housing Strategy

1.10 The current-term Government has made housing a top priority. In September 2012, the Government set up a Steering Committee to conduct the Long Term Housing Strategy (LTHS) Review. The LTHS Steering Committee, chaired by the Secretary for Transport and Housing, is tasked to make recommendations on Hong Kong's LTHS for the next 10 years (see paras. 5.4 to 5.6 for details).

Audit reviews

1.11 ***Audit reviews of 2006 and 2007.*** In October 2006 and March 2007, Audit completed reviews on the allocation of PRH flats and the management of PRH tenancies respectively. The reviews found that there was room for improvement in a number of areas including handling applications for the allocation of PRH flats, and management of tenancies. The review results were included in Chapters 3 and 5 of the Director of Audit's Report Nos. 47 and 48 respectively.

1.12 Against the above background, and in view of the great public concern about the increasing number of PRH applications in more recent years (see Figure 1 in para. 1.9), the Audit Commission (Audit) commenced a review in April 2013 to examine the allocation and utilisation of PRH flats. The audit fieldwork was completed in September 2013. The audit review focused on the following areas:

(a) allocation of flats to people in need of PRH (PART 2);

(b) maximising the rational utilisation of PRH flats (PART 3);

(c) tackling abuse of PRH (PART 4); and

(d) way forward (PART 5).

Acknowledgement

1.13 Audit would like to acknowledge with gratitude the assistance and full cooperation of the staff of the HA and the HD during the course of the audit review.

PART 2: ALLOCATION OF FLATS TO PEOPLE IN NEED OF PUBLIC RENTAL HOUSING

2.1 This PART examines the HD's allocation of flats to people in need of PRH.

Background

2.2 Public housing resources are valuable and heavily subsidised. According to the HD, the average construction cost for a PRH flat is about $700,000 (not including the land cost) and it also takes about five years to construct a flat. The HD manages the allocation of PRH flats through a waiting-list system operating mainly on a first-come-first-served basis (see para. 2.7 for details).

2.3 Prior to 1985, one-person applications were not allowed. The restriction was lifted in 1985 mainly in response to the demand from elderly and those affected by redevelopment or living in temporary housing areas. Since then, one-person applications have become a major source of demand for PRH and the average age of one-person applicants has been becoming younger. Many of them are living with their family members while waiting for allocation.

2.4 In September 2005, the QPS (see para. 1.8) was introduced to rationalise and re-prioritise the allocation of PRH to applicants (see para. 2.33 for details). Meanwhile, the number of PRH applications (228,000 as at 31 March 2013) has been increasing, with a large proportion (49% as at 31 March 2013) applying under the QPS (see para. 1.9).

2.5 On the other hand, the supply of PRH flats is limited. On average, only about 22,800 PRH flats (Note 3) are available for allocation each year. The supply

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Note 3: *The current plan of the HA is to construct about 79,000 PRH flats in the five years from 2012-13 to 2016-17. In addition, there are on average about 7,000 flats recovered every year from the surrender of flats by existing tenants as well as through enforcement actions against abuse of PRH resources. Including the recovered flats, there would be an average of about 22,800 flats available for allocation each year.*

has fallen short of the demand for PRH and it will be increasingly difficult for the HD to meet the AWT target of around three years for general applicants (see para. 1.8). Under the circumstances, it is imperative that flats are allocated to people most in need of subsidised PRH. It is also important that PRH flats are allocated in an open and equitable manner in line with the HA's mission statement (see para. 1.2).

2.6 Audit's examination of the HD's allocation of PRH flats has revealed room for improvement in the following areas:

(a) management of the WL for general applicants (paras. 2.7 to 2.32);

(b) implementation of the QPS (paras. 2.33 to 2.51); and

(c) processing of applications (paras. 2.52 to 2.80).

Management of the Waiting List for general applicants

WL for PRH applicants

2.7 The HA maintains a WL for PRH applicants. Appendix B shows the PRH eligibility criteria for general applicants. In general, PRH flats are allocated to eligible general applicants in accordance with the order their applications are registered on the WL (i.e. on a first-come-first-served basis). Non-elderly one-person applicants are placed under the QPS, and PRH flats are allocated in accordance with points assigned to applicants (see para. 2.33).

2.8 PRH estates are grouped into four districts (i.e. the Urban District, the Extended Urban District, the New Territories District and the Islands District — Note 4). According to the current housing allocation policy of the HA, the HD gives an eligible applicant three housing offers, one at each time, according to the

Note 4: *The Urban District comprises Hong Kong Island and Kowloon. The Extended Urban District includes Kwai Chung, Ma On Shan, Sha Tin, Tseung Kwan O, Tsing Yi, Tsuen Wan and Tung Chung. The New Territories District includes Fanling, Sheung Shui, Tai Po, Tin Shui Wai, Tuen Mun and Yuen Long. The Islands District excludes Tung Chung.*

applicant's choice of district. If the applicant rejects all the three housing offers without giving acceptable reasons, his application will be cancelled and he will be barred from reapplying for a PRH flat for one year.

2.9 The number of applicants on the WL has been surging over the past 10 years (see Figure 1 in para. 1.9). As at 31 March 2013, there were a total of about 228,000 applications on the WL (see also para. 1.9). Among them, there were about 107,000 (47%) family applications, 9,000 (4%) single elderly applications, and 112,000 (49%) non-elderly one-person applications under the QPS.

AWT for PRH applicants

2.10 Table 1 shows the current AWT targets set by the HA.

Table 1

AWT targets for PRH applicants
(August 2013)

PRH applicant	AWT target
General applicant	3 years
(i) Family applicant	— (Note)
(ii) Single elderly applicant	2 years
Non-elderly one-person applicant under the QPS	No target

Source: HD records

Note: No separate AWT target is set for family applicants who are classified by the HD as one type of general applicants.

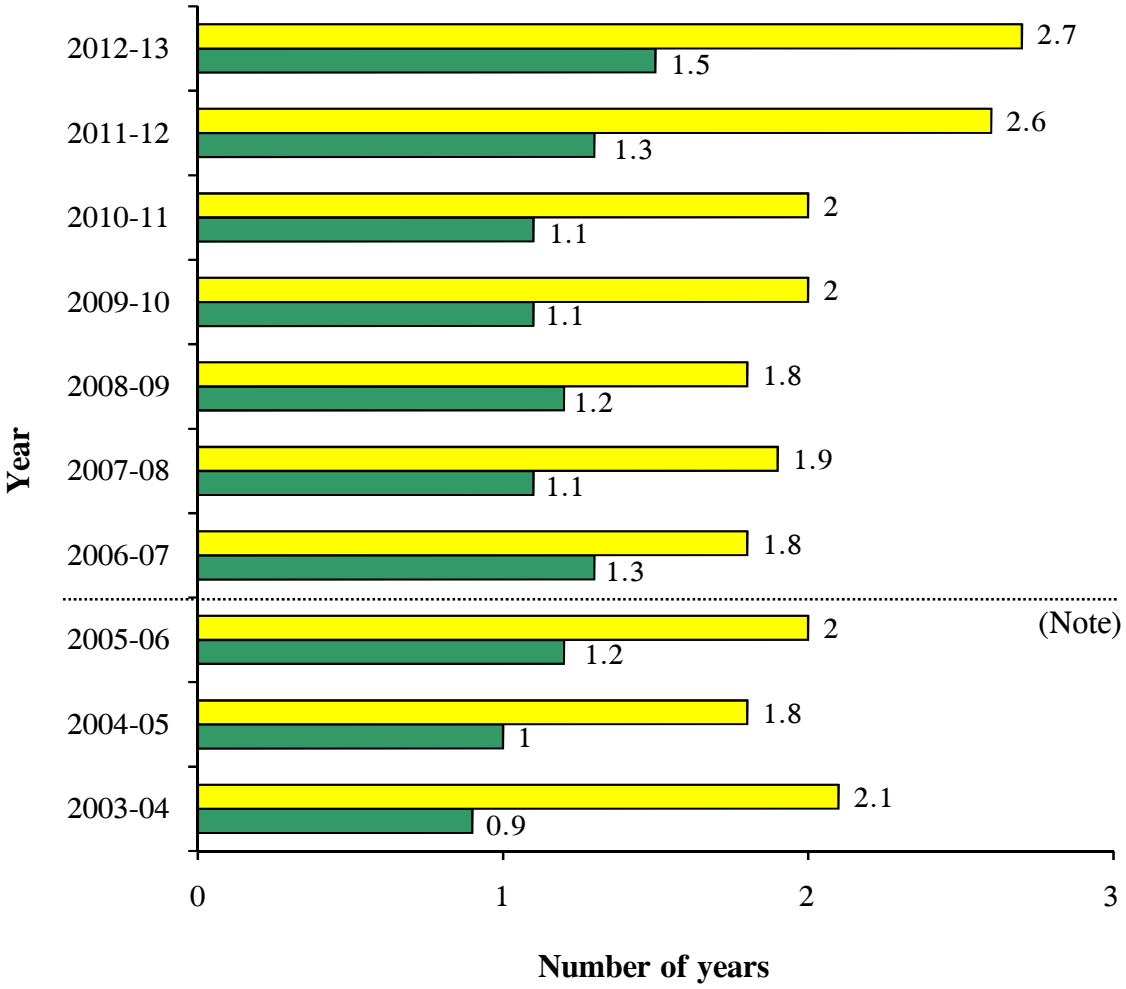
2.11 Currently the HA defines waiting time for PRH as the period between registration on the WL and the first housing offer, excluding any frozen period (Note 5) in between. The AWT for general applicants (excluding non-elderly one-person applicants) is the average of the waiting times up to first housing offers for all general applicants who were housed in the past 12 months. For the 12 months from 1 April 2012 to 31 March 2013, a total of 13,586 general applicants had accepted PRH flat offers and were housed.

2.12 The AWT target of 3 years for PRH was first announced by the Government in 1997 when the actual AWT was then around 6.5 years. The Government's objective at that time was to gradually reduce the AWT to 3 years by end-2005. Since 2005, the HA has committed to maintaining the 3-year target for AWT for general applicants (excluding QPS applicants) and a target of 2 years for single elderly persons on the WL. According to the HA's published information, the AWTs of the applicants as at 31 March 2013 were 2.7 years for general applicants and 1.5 years for single elderly applicants. Figure 2 shows the trend of AWTs for general applicants and single elderly persons in the past 10 years. It can be seen that since 2008-09, the AWT for general applicants had been increasing.

Note 5: *The reasons for freezing the application include the applicant has not yet fulfilled the residence requirement, the applicant is imprisoned, or the applicant has requested to put his/her application on hold pending arrival of family member(s) for family reunion.*

Figure 2

AWTs for general and single elderly applicants (2003-04 to 2012-13)



Legend: AWT for general applicants (years)

AWT for single elderly applicants (years)

Source: *HD records*

Note: *In September 2005, the QPS was launched. Thereafter, the QPS applicants and their waiting times were excluded in calculating the AWT for general applicants.*

2.13 In September 2005, the QPS was launched and non-elderly one-person applicants on the WL were placed under the QPS. The HA did not set any target on the AWT of these QPS applicants. Thereafter, the QPS applicants and their waiting times were excluded in calculating the AWT for general applicants. As such, both the number and the AWT of general applicants should have been reduced accordingly. Because of the above-mentioned changes in the WL, the figures of the AWT for WL applicants before 2005 and the AWT for general applicants on the WL after 2005 may not be directly comparable.

Transparency and accountability in the AWT computation

2.14 ***Importance of AWT.*** Apart from some exception cases (e.g. cases for compassionate rehousing recommended by the Social Welfare Department, and people affected by clearance/redevelopment), PRH flats are generally allocated to general applicants on a first-come-first-served basis, taking into account their family size and their choice of district. The relative merits of the eligible applicants' housing needs are not duly taken into account. Though the current system may not be entirely satisfactory in this respect, this is mitigated by the fact that the current AWT targets are set at a reasonable timeframe of around 3 years for general applicants and 2 years for single elderly applicants. In other words, all eligible general applicants, irrespective of their relative housing needs, do not have to wait too long for the allocation of PRH flats. The AWT is therefore a key indicator of efficiency and effectiveness for the allocation of PRH flats to meet the housing needs of eligible persons. The transparency and accountability in the computation of AWT is a matter of concern for all stakeholders of the PRH system.

2.15 ***Definition and computation method not adequately publicised.*** Despite the importance of the AWT to PRH applicants, the way the AWT is calculated may not be entirely clear to them. In fact, the definition and computation method of the AWT adopted in 1997 had not been clearly disclosed in any Government papers/publications. Only in recent years had the term "AWT" been defined in the HA's Subsidised Housing Committee (SHC) papers as the period between registration on the WL and the first housing offer. Audit noted that the definition of AWT and the basis of its calculation were not readily disclosed through common channels accessible to the general public (e.g. the HA's website, pamphlets, brochures or the PRH application forms). According to the HD, as the AWT definition and the basis of its calculation have been mentioned on various public

occasions (e.g. meetings of the Legislative Council and the HA) as well as to the press, such information is considered by the HD to be publicly known. However, for greater transparency and better public accountability, Audit considers that the HD should consider publicising such information so that all applicants fully understand the definition of AWT and the basis of its calculation.

2.16 ***AWT for family applicants.*** Audit noted that single elderly applicants were included by the HD when calculating the AWT for general applicants. As the HA has committed to providing PRH to the single elderly applicants in two years' time, the inclusion of their waiting times in the AWT computation will shorten the AWT of the general applicants. Audit analysed the data of the 13,586 general applicants housed in the past 12 months ended 31 March 2013, and found that if the waiting times of the single elderly applicants had been excluded from the calculation, the AWT for family applicants on the WL would have become 3.01 years, instead of 2.7 years as stated by the HD. Upon Audit's enquiry as to why the HD did not disclose a separate AWT figure for family applicants (by excluding the waiting times of the single elderly applicants), the HD explained in September 2013 that it was the current policy of the Government and the HA to accord priority to general applicants (which include family applicants and single elderly applicants) over non-elderly one-person applicants. As such, the AWT for general applicants should be presented as a whole (including family applicants and single elderly applicants) to assess how far the target has been attained.

Elapsed time while waiting for PRH

2.17 In the absence of transparency for AWT, it is quite natural for the general public to interpret the waiting time for PRH as the period between the confirmed receipt of an application by the HD and the date on which the applicant was housed. However, the waiting time for PRH defined by the HD in fact covers only the period between registration on the WL and the first housing offer, excluding any frozen period in between, for applicants who were housed in the past 12 months (see para. 2.11). Such AWT as calculated by the HD is different from the actual waiting time as may be perceived by the applicants. To estimate the actual waiting time as may be perceived by the applicants, Audit analysed a number of time periods not included in the AWT calculation, using the same applicants who were housed by the HD in the past 12 months. These periods include the time lapse:

(a) from the confirmed receipt of the applicant's application to the registration date on the WL;

(b) where applicable, from the first offer to the second offer and from the second offer to the third offer; and

(c) between acceptance of offer (i.e. date of intake) and commencement of tenancy (Note 6).

Taking into account these additional time periods where applicable, the total waiting time for PRH is referred to as the elapsed time while waiting (ETW) in this Report.

2.18 Audit analysed the data of the 13,586 general applicants housed in the 12-month period ended 31 March 2013. Table 2 shows an analysis of the ETW for these 13,586 applicants. It can be seen that the average ETW for an applicant ranged from 2.91 years (if the applicant accepted the first offer) to 4.12 years (if the applicant accepted the third offer). Figure 3 shows a comparison of the ETW for PRH and the AWT as reported by the HD for 2012-13.

Note 6: *As it is the HD's policy to give a 2-week rent free period to applicants, the date of commencement of tenancy is 14 days after the date of intake. For simplicity, the actual waiting time for PRH will only be counted up to the date of intake.*

Table 2

Analysis of the ETW for general applicants housed in the 12-month period ended 31 March 2013

Stage	Average ETW (year)	Average ETW (from application to date of intake) (year)
From application (Note 1) to registration	0.21	—
From registration to first offer (Note 2)	2.70	2.91
From first offer to second offer (Note 3)	0.43	3.34
From second offer to third offer (Note 4)	0.78	4.12

Source: Audit analysis of HD records

Note 1: Some applications might be rejected for a few times by the HD due to insufficient information/documents provided by the applicants (see paras. 2.58 and 2.59). The application date was the date of receipt of an accepted application.

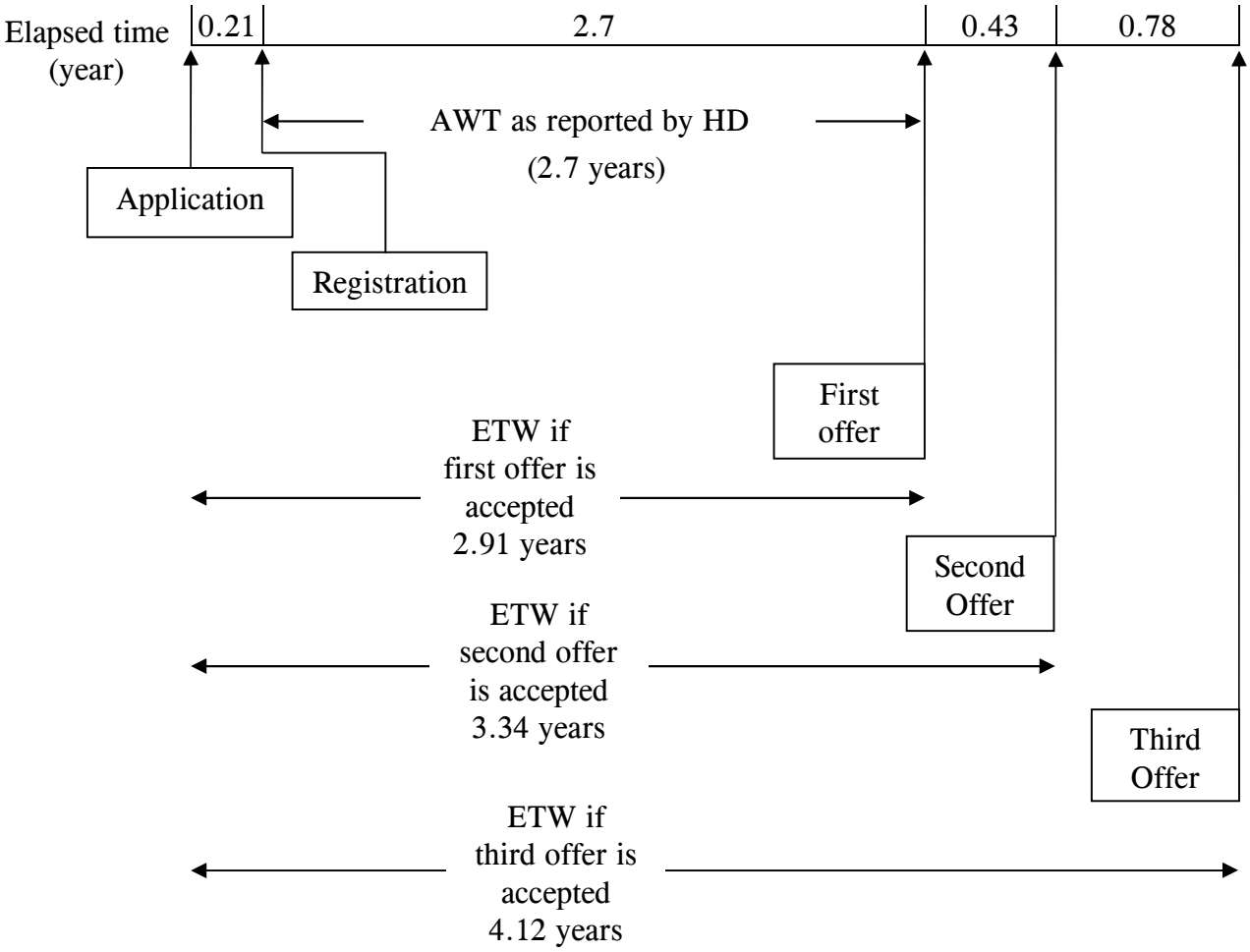
Note 2: About 49% of the applicants were housed via the first offer.

Note 3: About 36% of the applicants were housed via the second offer.

Note 4: About 15% of the applicants were housed via the third offer.

Figure 3

Comparison of ETW and AWT for PRH
(2012-13)



Source: Audit analysis of HD records

2.19 Audit noted that since year 2000, applicants have been given three single offers on different dates instead of "three offers in one go" in the allocation of the PRH flats. It was the HA's expectation that the whole allocation process would take 9 to 12 weeks to complete. However, as can be seen from Table 2, the average ETW for 2012-13 between the first and second offers was 0.43 year (i.e. over 22 weeks), and that between the first and third offers was 1.21 years (i.e. (0.43 + 0.78) years or over 62 weeks), which had considerably exceeded the HA's expected timeframe of 9 to 12 weeks at the time of year 2000.

2.20 The HD currently does not disclose information about the average ETW between the first and second offers or that between the second and third offers. Such information is useful for the applicants in making their decisions on whether to accept the housing offer right away or wait for the next chance (see also paras. 2.18 and 2.19).

2.21 Housing has always been a very important decision that needs to be made by all people in Hong Kong. Audit considers that there is merit for the HD to disclose the average ETW (from the date of receipt of an accepted application to the date the applicant was housed) so as to increase the transparency of the allocation mechanism and help the applicants make better informed decisions.

2.22 Upon Audit's enquiry, the HD explained in September 2013 that:

(a) while eligible applicants were given three flat offers, the applicants were provided with a housing opportunity at the first offer. It was a matter of personal decision if the applicant declined the first flat offer to wait for subsequent offers. Thus, the waiting time could only be counted up to the first flat offer. The decision as to whether or not to accept the first, second or third offer rested entirely with the applicant and was not under the control of the HD. It was therefore inappropriate for the HD to publish information regarding aspects of waiting time over which it had no control. In the HD's view, it would not help applicants in any event. In particular, the past pattern of acceptance of the second or third offers and the past trend of the time between offers did not represent the situation in the future, which would depend on the prevailing circumstances. The HD considered that it would not improve the transparency of the allocation mechanism and was not necessarily useful for helping the applicants make better informed decisions; and

(b) the established methodology (see para. 2.11) formed the basis for formulating and maintaining the target of keeping the AWT for general applicants at around three years. It was therefore inappropriate to create another term "ETW for PRH", which might cause confusion.

Audit noted the HD's explanations, but considers that the HD should disclose more information relating to its allocation mechanism to enhance transparency.

Long-outstanding applications on the WL

2.23 It is worth noting that the three-year AWT target and the AWT reported by the HD are calculated based on the average of the waiting times for all general applicants who were actually housed in the past 12 months (see paras. 2.11 and 2.12). This AWT does not indicate the average ETW for general applicants who are still on the WL for PRH. In fact, some of the applicants currently on the WL have been waiting for much longer than three years. Audit conducted an analysis of the housing situation of the 116,927 general applicants on the WL as at 31 March 2013. Table 3 shows the distribution of the ETW for these applicants. An analysis of the housing offers given to these applicants is shown in Table 4.

Table 3

ETW for general applicants on the WL
(31 March 2013)

ETW (Note 1)	Number of general applicants	Percentage of general applicants	
Less than 3 years	83,270	71%	
3 to less than 5 years	26,090	22%	
5 to less than 10 years	7,552	7%	29%
10 years or more	15 (Note 2)	—	
Total	116,927	100%	

Source: Audit analysis of HD records

Note 1: The ETW was counted from the registration date. Frozen periods of the applicants after first offer were included in the ETW.

Note 2: For these 15 cases, if frozen periods after first offer were excluded, their ETW would be less than 10 years.

Table 4

Housing offers given to general applicants on the WL
(31 March 2013)

Housing offer given	Number of general applicants (Note 1)		Percentage of general applicants
No offer	97,274		83%
1st offer	8,274		7%
2nd offer	8,117	19,653	7%
3rd offer	2,397		2%
Extra offer (Note 2)	865		1%
Total	116,927		100%

Source: Audit analysis of HD records

Note 1: Frozen cases were included.

Note 2: Extra offers would be given only when applicants have acceptable reasons (e.g. medical reasons) for refusing housing offers.

2.24 Table 3 shows that 29% of general applicants on the WL as at 31 March 2013 had already waited for 3 years or more for the allocation of PRH. In particular, 7% had waited for 5 years or more. Table 4 also shows that 83% of the applicants on the WL had not been given any housing offer yet.

2.25 Audit's further analysis found that out of a total of 116,927 general applicants on the WL as at 31 March 2013, about 12% (13,974) were applicants who had waited for 3 years or more but had not been given any housing offer. In particular, 1,312 (9%) had already waited for 5 years or more. An analysis of the ETW for these 13,974 applicants is shown in Table 5.

Table 5

ETW for general applicants without any housing offer on the WL (31 March 2013)

ETW (Note)	Number of general applicants
3 to less than 5 years	12,662 (91%)
5 to less than 10 years	1,312 (9%)
Total	13,974 (100%)

Source: Audit analysis of HD records

Note: The ETW was counted from the registration date.

2.26 Among the 13,974 general applicants on the WL who had waited for 3 years or more but without any housing offer, about 66% (9,240) of them had reached the investigation stage or had been accepted for allocation (see Appendix C). However, for the other 34% (4,734) applicants, they had waited for more than 3 years but were still awaiting a housing offer. Audit considers that the HD should investigate into the reasons for general applicants who have waited for over 3 years without any housing offer, in particular for those cases with very long waiting time (say 5 years or more).

2.27 In this regard, Audit noted that the HD had carried out a special exercise in 2012 to investigate into those cases (about 1,400 cases) of general applicants on the WL as at end of June 2012 with waiting time of 5 years or more but without any housing offer. Results of the HD's investigation showed that 40% of these cases involved special circumstances of various kinds, including refusal to accept housing offers with reasons (27%), change of household particulars (8%), as well as other circumstances (5%). However, for the other 60% cases (about 860 cases), no mention had been made as to whether there were valid reasons for the long waiting time of these cases or whether they were just omissions. Audit considers that the HD needs to conduct investigations on a periodic basis to identify similar long-outstanding cases of general applicants on the WL.

Long time taken to arrange housing offers

2.28 As can be seen from Table 2 in paragraph 2.18, if the first housing offer was not accepted by the applicant, the HD took on average 5 months (0.43 year) to make the second offer and, if still not accepted, the HD took another 9 months (0.78 year) to make the third/final offer. As noted in paragraph 2.19, the whole process of arranging the three housing offers had considerably exceeded the HA's expected timeframe of 9 to 12 weeks at the time of year 2000. It can also be seen from Table 4 in paragraph 2.23 that out of a total of 116,927 general applicants on the WL as at 31 March 2013, 19,653 (17%) had been given at least one housing offer but were still awaiting re-offer of PRH by the HD. The long time taken to arrange the housing offers might be a reason for some of the long-outstanding general applications on the WL as at 31 March 2013.

2.29 Upon Audit's enquiry, the HD explained in September 2013 that allocation started with the high priority applicants no matter whether they were given the first, second or third offers. However, flats might be allocated to a lower priority applicant due to a number of reasons, e.g. the higher priority case had location preference. Furthermore, if an applicant had rejected a flat in a particular estate, he would not be allocated another flat in the same estate in the next offer and, as a result, the pool of flats available for allocation in the subsequent offers was smaller.

2.30 Table 6 shows an analysis of the ETW for the 8,130 general applicants on the WL who had received first offers but were not housed up to 31 March 2013. Audit considers that there is a need for the HD to review these cases on a periodic basis.

Table 6

ETW for general applicants on the WL after receiving first offers but were not housed (31 March 2013)

ETW after receiving the first offer (Note)	Number of general applicants	Percentage of general applicants
Less than 1 year	6,242	76.8%
1 to less than 2 years	473	5.8%
2 to less than 3 years	906	11.1%
3 to less than 5 years	485	6.0%
5 to less than 10 years	23	0.3%
10 years or more	1	—
Total	8,130	100.0%

Source: *Audit analysis of HD records*

Note: *Frozen periods of the applicants after first offer were included in the ETW.*

Audit recommendations

2.31 **Audit has *recommended* that the Director of Housing should:**

(a) **enhance the transparency and accountability of the HD's management of the WL for PRH. For example, the HD may consider:**

(i) **publicising the definition of AWT and the basis of its calculation in the HA's website, pamphlets and brochures; and**

(ii) **enhancing the transparency of the flat allocation mechanism to help applicants make informed decisions; and**

(b) **conduct investigations periodically to identify long-outstanding cases in which general applicants have waited on the WL for over 3 years, in particular for those cases with very long waiting time (say 5 years or more), and take necessary follow-up actions.**

Response from the Administration

2.32 The Director of Housing generally agrees with the audit recommendations. He has said that:

(a) more can be done on publicising the definition of AWT and the basis of its calculation. For example, the HD will consider including this information in the HA's website and the application guidelines in the future;

(b) in view of the increasing number of PRH applicants and the public's concern over the waiting time of WL applicants, the HA had conducted an analysis of the housing situation of WL applicants in 2011 and again in 2012, based on the data as at end June 2011 and end June 2012 respectively. The analyses included a special exercise to study those cases on the WL with a waiting time of five years or above and without any flat offer. The HD are currently finalising a follow-up analysis of the housing situation of WL applicants as at end June 2013, which is an update of the two previous analyses. This analysis will be carried out annually to allow the HD to monitor the WL situation;

(c) the HD's special exercise (see (b) above) showed that most of the applicants with longer waiting time opted for flats in the Urban or the Extended Urban Districts. In general, this reflects the popularity of the Urban and the Extended Urban Districts, and thus applicants opting for flats in the two Districts are more likely to have longer waiting time than in other Districts. Households on the WL with three or four persons also tend to have longer waiting time. It is worth noting that there will be a steady supply of newly completed flats in the Urban and Extended Urban Districts. Among the new production from 2013-14 to 2016-17, about 19% would be one/two-person units, 25% would be two/three-person units, 39% would be one-bedroom units (for three/four persons) and 16% would be two-bedroom units (for four persons or above). The new supply would help meet the demand for PRH in the Urban and Extended Urban Districts and for three/four-person households; and

(d) results of the HD's analysis also showed that many of the cases with longer waiting time involved special circumstances of various kinds, including change of household particulars, refusal to accept housing offer(s) before with reasons, as well as other circumstances such as applications cancelled due to failure to meet income eligibility requirements in the detailed vetting stage, failure to attend an interview and inadequate documentary proof, location preference on social/medical grounds, and applications for Green Form Certificate for purchasing Home Ownership Scheme (HOS) units.

Implementation of the Quota and Points System

2.33 The QPS was introduced in September 2005 for the allocation of PRH to non-elderly one-person applicants (see also paras. 2.3 and 2.4). Under the QPS, the annual allocation is set at 8% of the number of PRH flats to be allocated to WL applicants, subject to a ceiling of 2,000 units. The key features of the QPS are given at Appendix D. Points are assigned to applicants based on three determining factors, namely:

(a) age of applicants at the time of submitting their PRH applications;

(b) whether the applicants are PRH tenants; and

(c) the waiting time of the applicants.

The AWT target of about three years for general applicants is not applicable to applicants under the QPS.

Public concern about the increasing number of PRH applications

2.34 As at end of March 2013, among the 228,000 applications on the WL for PRH, 112,000 (49%) were non-elderly one-person applications under the QPS. There has been growing public concern about the increasing number of PRH applications (see Figure 1 in para. 1.9).

Large number of young and better educated QPS applicants

2.35 According to the HA's 2012 Survey on QPS applicants for PRH, as at end of December 2012, among the 106,900 QPS applicants, 67% (71,500) were aged 35 or below. Among these young applicants:

(a) 34% were students when they applied for PRH;

(b) 47% had attained post-secondary or higher education; and

(c) 33% were PRH tenants.

However, for those aged above 35, only 7% of them had attained post-secondary or higher education.

2.36 Based on HD records of QPS applicants, Audit conducted an analysis of the age distribution of these applicants as at 31 March 2013 (see Table 7).

Table 7

Age distribution of QPS applicants
(31 March 2013)

Age	Number of applicants	Percentage of applicants
18 – 22	27,283	24% } 57%
23 – 30	36,132	33% }
31 – 35	11,355	10%
36 – 50	26,562	24%
51 – 60	10,195	9%
>60	1 (Note)	—
Total	111,528	100%

Source: Audit analysis of HD records

Note: Audit found that this applicant had already been housed since July 2010, but the QPS record of the WL was not updated (see para. 2.49).

2.37 As can be seen from Table 7, as at 31 March 2013, 57% of the QPS applicants were aged 30 or below. In particular, 27,283 (24%) applicants were aged 18 to 22, including 1,768 (2%) who were aged 18 (i.e. the minimum eligible age under the QPS). Most of these applicants were students and were living with their families. It appears that many of these young and better educated (see para. 2.35(b)) applicants, particularly students who are dependants themselves living with their parents/family members, may not have a pressing need for PRH.

Built-in incentive encouraging early application for PRH

2.38 As mentioned in paragraph 2.5, given limited supply of and ever-increasing demand for subsidised PRH, it is imperative that PRH flats are allocated to people most in need of housing assistance. Under the current QPS, the housing needs are assessed with reference to the age of the applicants and whether they are living in PRH. However, the current system tends to encourage young applicants to apply for PRH under the QPS as early as possible (best at the minimum eligible age of 18) despite the fact that they may not have a pressing need for housing. Because each year of waiting under the QPS attracts 12 points, whereas each year of age increase at the time of application attracts only 3 points (see para. 1(a) and (c) in Appendix D), there is a built-in incentive to apply for PRH early under the QPS, and this may have been a catalyst for the increasing number of PRH applications in recent years. Unless such incentive is removed, the number of non-elderly one-person applications under the QPS is expected to continue increasing and the WL will likely become longer and longer.

Sustainability of the QPS

2.39 Audit analysed the records of the 111,528 QPS applicants registered on the WL as at 31 March 2013 and found that the vast majority of them (96.8%) have not reached any further processing stages.

2.40 Table 8 shows the distribution of the ETW for QPS applicants. It can be seen that about 30% (33,868) of them had already waited for more than three years.

Table 8

ETW for QPS applicants on the WL
(31 March 2013)

ETW (Note)	Number of applicants	Percentage of QPS applicants
Less than 1 year	33,227	29.8%
1 to less than 3 years	44,433	39.8%
3 to less than 5 years	17,606	15.8%
5 to less than 10 years	16,041 (33,868)	14.4% (30.4%)
10 years or above	221	0.2%
Total	111,528	100%

Source: *Audit analysis of HD records*

Note: *The ETW was counted from the registration date.*

2.41 Table 9 shows an analysis of the AWTs of those applicants who had been housed through the QPS during the period 2008-09 to 2012-13. It can be seen that no PRH flat had been allocated to any applicant aged below 30, and the majority of the housed applicants were aged 50 or above. Furthermore, the AWT of the QPS applicants had increased from 1.8 years in 2008-09 to 3.6 years in 2012-13. The number of applicants housed had also dropped from 1,991 in 2008-09 to 1,690 in 2012-13.

Table 9

AWTs of applicants housed through the QPS
(2008-09 to 2012-13)

	2008-09		2009-10		2010-11		2011-12		2012-13	
Quota	2,000		1,960		1,760		1,850		1,690	
Age group	No. of applicants housed	AWT (year)	No. of applicants housed	AWT (year)	No. of applicants housed	AWT (year)	No. of applicants housed	AWT (year)	No. of applicants housed	AWT (year)
Below 30	—	—	—	—	—	—	—	—	—	—
30 – 39	24	1.9	11	2.3	37	3.6	35	4.0	37	5.4
40 – 49	580	2.4	433	2.5	677	3.7	548	4.1	482	5.2
50 or above	1,387	1.6	1,504	1.6	1,032	1.9	1,264	2.4	1,171	2.9
Overall	1,991	1.8	1,948	1.8	1,746	2.6	1,847	2.9	1,690	3.6

Source: HD records

2.42 Assuming that there would not be any new applicants or drop-out cases and with a quota of not more than 2,000 units a year, it would take many years to fully meet the demand of the existing QPS applicants (currently more than 100,000 in number). This casts doubt on the effectiveness and sustainability of the current QPS as a means to meeting the great demand for PRH from non-elderly one-person applicants.

2.43 Upon enquiry, the HD informed Audit in September 2013 that:

(a) it was the policy of the Government and the HA to accord priority to the general applicants over non-elderly one-person applicants. The QPS was therefore introduced to rationalise the limited public housing resources among different groups of applicants, and to give priority to general applicants over the non-elderly one-person applicants. The QPS was not a means to meet the PRH demand from non-elderly one-person applicants per se; and

(b) within the QPS, the policy was to offer higher priority for those one-person applicants who were older, have waited for longer time and were not currently living in PRH. The QPS was designed such that those who were older and had waited for longer time would get more points and hence had a higher chance for earlier housing to PRH.

As the QPS has been operating in the current mode for some eight years since its inception in 2005, Audit considers it timely for the HA to conduct a comprehensive review of the QPS to evaluate its effectiveness and to see whether it needs to be fine-tuned or revamped for further improvements.

Screening out ineligible applicants on the WL

2.44 The number of applications on the WL is an important indicator to reflect the demand for PRH. Ineligible applicants (or applicants who have become ineligible due to changes in circumstances while waiting) on the WL will inflate the demand for PRH and provide misleading management information for the purposes of planning the PRH construction programme and formulating housing policies/initiatives. Therefore, screening out ineligible applications from the WL should be performed periodically and not be deferred to the stage of arranging vetting interviews.

2.45 In 1993, the then Management and Operations Committee (Note 7) of the HA introduced a revalidation check system to manage the WL for PRH to eliminate applicants who had become ineligible due to changes in circumstances before their applications were due for investigation. Existing applicants on the WL who had been registered for more than two years would be asked in writing to confirm their interest in PRH and declare their property ownership. If applicants indicated in their return slips withdrawal, property ownership, or having been re-housed through other categories, their applications would be cancelled. Those who did not respond to the reminders would also have their applications cancelled. This helped to screen out ineligible applications regularly and to obtain a more accurate picture of the demand for PRH.

Note 7: *The Management and Operations Committee was subsequently renamed as the Rental Housing Committee in 1998, and as the Subsidised Housing Committee in 2002.*

2.46 In year 2000 when the time gap between pre-registration stage and vetting interview stage had been significantly shortened, such revalidation process was rendered redundant. In the event, the revalidation check system was removed.

2.47 Audit noted that the number of QPS applicants aged below 30 had increased by 350% in the past seven years, rising from 13,400 in March 2007 to 60,300 in March 2013. According to the HD, about half of these applicants attained post-secondary or higher education. Some of these younger and better educated applicants may be able to improve their living conditions on their own through income growth and eventually drop out of the QPS. Therefore, using the total number of QPS applicants on the WL to forecast the demand for PRH can be misleading.

2.48 In view of the fact that there were over 110,000 applicants on the WL under the QPS and the time gap between registration and investigation could be as long as more than five years, Audit considers that there is merit in reinstating the revalidation check system to screen out ineligible applicants on a regular basis so that the HA can assess the genuine housing demand of applicants under the QPS.

QPS records of the WL not promptly updated

2.49 As can be seen from Table 7 in paragraph 2.36, there was one applicant aged over 60 who was still classified under the QPS of the WL as at 31 March 2013. According to the HA's policy, an applicant whose age is over 60 should be classified as a general applicant on the WL under the single elderly persons priority scheme or elderly persons priority scheme. Audit found that in this case, the applicant was already housed in July 2010 but the record was not yet deleted from the QPS records of the WL. Details are given in Case 1.

Case 1

QPS records of the WL not promptly updated

1. In January 2009, the applicant was registered on the WL under the QPS.

2. In December 2009, the Social Welfare Department wrote to the HD supporting the applicant's request to change location preference based on social and medical grounds. However, the applicant was not yet due for investigation.

3. In June 2010, the applicant applied for PRH through compassionate rehousing under another application number and she agreed to cancel her application under the QPS. She was housed in July 2010.

4. In June 2013, the HD found that the applicant was still on the WL under the QPS when she reached the stage of vetting interviews for PRH. The HD cancelled the application in July 2013.

Audit comments

5. Audit considers that the HD should find out if there are similar cases on the WL who had already been housed in PRH and take necessary follow-up actions. The HD should also check regularly to ensure that the applicants on the WL have not been housed in PRH through other means.

Source: HD records

Audit recommendations

2.50 **Audit has *recommended* that the Director of Housing should:**

(a) **conduct a comprehensive review of the QPS, including, for example:**

(i) **examining whether there is room for improvement in the points system of the QPS; and**

(ii) **assessing the effectiveness and sustainability of the QPS in achieving its objectives;**

(b) **consider the need to screen out ineligible QPS applicants from the WL on a periodic basis; and**

(c) **conduct regular checks to ensure that follow-up actions are promptly taken on applicants on the WL who have been housed in PRH through other channels.**

Response from the Administration

2.51 The Director of Housing generally agrees with the audit recommendations. He has said that:

Regarding paragraph 2.50(a)

(a) for housing issues under HA's purview, including the QPS, the LTHS Steering Committee's recommendations and views of the public collected during the consultation period will be referred to the HA for consideration and implementation (see also paras. 5.8 and 5.9). The HA will take the final decision on any modifications to the QPS;

(b) the LTHS Steering Committee supports HA's policy that priority should continue to be given to general applicants for PRH flats, and has looked at ways to better manage the PRH demand and refine the existing measures on rationalisation of the existing PRH resources, including the QPS, with a view to increasing PRH supply. Recommendations relating to QPS applicants put forward by the LTHS Steering Committee include:

(i) HA should increase the annual PRH quota for applicants under the QPS;

(ii) extra points should be allocated to those above the age of 45 with a view to improving their chance to gain earlier access to PRH, and progressively extending the award of additional points to those over 40 and then over 35;

(iii) consideration should be given to setting out a roadmap to progressively extend the around three-year AWT target to non-elderly one-person applicants above the age of 35; and

(iv) HA should explore the feasibility of building dedicated PRH blocks for singletons at suitable fill-in sites within existing PRH estates (such as those with a relatively lower plot ratio and with sufficient infrastructural facilities), provided that it complies with the relevant planning requirements;

Regarding paragraph 2.50(b)

(c) the LTHS Steering Committee has recommended, among others, that the HA should develop a mechanism to review the income and assets of QPS applicants and conduct regular reviews accordingly, in order to remove applicants who are no longer eligible from the WL; and

Regarding paragraph 2.50(c)

(d) the HD will, subject to resources, conduct regular checks to ensure that follow-up actions are promptly taken on WL applicants who have been housed through other channels.

Processing of applications

2.52 The Applications Sub-section of the Allocation Section under the HD's Strategy Division is responsible for processing PRH applications and allocation of flats. The Applications Sub-section comprises four Units, namely the Administration Unit, the Registration and Civil Service Unit (RCSU), the Waiting List Unit (WLU) and the Lettings Unit (LU) (see Appendix A). The RCSU handles the applications. The WLU conducts interviews with applicants and family members to confirm their eligibility (see para. 2.53), while the LU is responsible for allocating PRH flats.

2.53 The applicant should submit the completed application form together with the required documents for registration on the WL. The application form and supporting documents are subject to pre-registration vetting by the RCSU. The RCSU examines the application to see if the information is complete and the basic eligibility criteria (see Appendix B) are met. If the application is in order, the RCSU registers the application on the WL and assigns an application number in sequence to the applicant. Otherwise, no registration is made.

2.54 Applications for the allocation of PRH flats are investigated in accordance with the order of registration on the WL and the availability of PRH flats in the district chosen by the applicant. When an application is due for investigation, the WLU arranges a vetting interview (Note 8) with the applicant. After assessing the eligibility of the application, the interviewer makes a recommendation to accept or cancel the application, or arrange follow-up actions. All vetted applications are then checked by an Assistant Housing Manager (AHM) or a Housing Manager (HM), who authorises the acceptance or cancellation of applications, or further actions. The accepted cases are passed to the LU awaiting allocation of PRH flats. Acceptance letters are sent to successful applicants. For cancelled cases, letters of rejection are sent. The procedures for processing PRH applications are shown at Appendix C.

Use of declaration forms

2.55 All new applications are subject to pre-registration vetting before they are registered on the WL. Each applicant should submit a completed application form, providing the names of the applicant and all family members, and declaring in the application form, among others, their monthly income and net assets owned. In addition, they are required to provide documentary proofs to support the amounts of income and assets declared. Since the HD adopts an honour system for processing applications for registration on the WL for PRH, the vetting officers are not required to verify the amounts and the completeness of income and assets declared by applicants.

Note 8: *The applicant and family members aged 18 or above are invited to attend the interview. During the interview, the applicant and family members are required to declare their income, net asset value and property ownership. They are required to produce standard employment certificates bearing employer's signatures and official chops, to substantiate their declared income.*

2.56 A total of 17 declaration forms are currently in use for PRH applications (see Appendix E). Audit notes that:

(a) these declaration forms are not attached to or distributed with the application form and can only be downloaded from the HD's website; and

(b) their usage and availability are not shown on the application form or the "Information for Applicants" (Note 9). They are also not mentioned in the bilingual video clip (uploaded onto the HA's website) informing applicants how to fill in the application form.

2.57 Declarations by the applicants form a very important part of the honour system adopted by the HD for processing applications (see para. 2.55). Audit noted that many applicants did not use the appropriate declaration forms to support their applications, resulting in the need for re-submissions (see paras. 2.58 to 2.64). They did not seem to know the proper use of these declaration forms provided by the HD. Audit considers that the HD needs to suitably revise the PRH application form, the Information for Applicants, and the video clip to provide guidance to applicants on the availability and the proper use of declaration forms.

Resubmitted applications

2.58 The HD issues an acknowledgement letter upon receipt of an application. In accordance with its performance pledge, within three months from the confirmed receipt of an application, the HD notifies the applicant in writing as to whether he is successful in registering on the WL for PRH, and allots an application number to the successful applicant.

2.59 If an applicant fails to provide all the required information/documents, the HD will return the application form together with all supporting documents back to the applicant, and the case is regarded as closed. The applicant has to re-apply by using a new application form, or using the returned application form and filling in a new date of application.

Note 9: *The "Information for Applicants" is a booklet distributed together with the application form to potential applicants for PRH flats.*

2.60 Table 10 shows the applications vetted by the RCSU and the vetting results in the past five years.

Table 10

Applications vetted by the RCSU
(2008-09 to 2012-13)

Year	Number of applications			
	Accepted for registration (a)	**Rejected (b)**	**Returned (c)**	**Processed (d) = (a) + (b) + (c)**
2008-09	40,265	13,349	37,492	91,106
2009-10	36,216	11,529	32,244	79,989
2010-11	45,733	13,689	39,422	98,844
2011-12	62,849	18,219	46,482	127,550
2012-13	61,554	15,753	46,625	123,932
Total	246,617 (47%)	72,539 (14%)	202,265 (39%)	521,421 (100%)

Source: HD records

2.61 It can be seen from Table 10 that, among the some 520,000 applications processed during the period 2008-09 to 2012-13:

(a) 47% were accepted for registration on the WL;

(b) 14% were rejected because the eligibility criteria were not met; and

(c) 39% were returned to applicants because of insufficient information/documents.

The rate of returning applications (39%) was high.

2.62 Audit analysed those applications which were accepted for registration in the past five years to see the number of times they had to be submitted/resubmitted before the applications were accepted for registration (see Table 11). It can be seen that, on average:

(a) 55% applications were accepted for registration right away and no resubmission was required;

(b) 36% applications were accepted for registration upon the first resubmission; and

(c) 9% applications had to be resubmitted more than once before they were accepted for registration.

Table 11

Analysis of applications accepted for registration
(2008-09 to 2012-13)

Number of times of resubmission	Number of applications					
	2008-09	2009-10	2010-11	2011-12	2012-13	Total
0 (Note)	23,813	19,015	23,361	35,121	34,774	136,084 (55%)
1	14,436	13,650	17,561	22,377	20,368	88,392 (36%)
2	1,870	2,856	3,866	4,240	4,840	17,672 (7%)
3	139	577	753	889	1,167	3,525 (2%)
4 or more	7	118	192	222	405	944 (—)
Total	40,265	36,216	45,733	62,849	61,554	246,617 (100%)

Source: Audit analysis of HD records

Note: This means that no resubmission was required and the application was accepted for registration right away.

2.63 Audit selected for examination five cases which had their applications resubmitted four times or more, and found that:

(a) all of them had already been applying for registration onto the WL for more than 1 year (ranging from 1.2 to 1.9 years) before they were accepted for registration;

(b) except for one case, no telephone contact had been made with the applicants;

(c) in one case (Case 2), the vetting officer did not give adequate advice to the applicant on the necessary information/documents to be provided, resulting in the resubmission being returned again; and

(d) in another case (Case 3), the vetting officer mistakenly registered the application on the WL due to inadequate coordination between different vetting officers.

Case 2

Need to provide clearer advice to the applicant

1. Concerning the applicant's employment certificate, the vetting officer:

(a) did not indicate in the first return letter of September 2008 the information/documents that should be provided; and

(b) repeatedly stated in the second to fifth return letters (from December 2008 to August 2009) that the employment certificate submitted by the applicant contained mistakes (but did not specify what the mistakes were) and a new certificate was needed, and asked the applicant to make reference to the sample attached.

Audit comments

2. Audit considers that the HD should provide clearer advice to the applicant on the HD's requirements.

Source: HD records

Case 3

Inadequate coordination between vetting officers

1. The applicant owned a property in the Mainland and was asked by the same vetting officer four times (from July 2008 to June 2009) to provide the relevant valuation report, but the applicant failed to provide the report.

2. When the applicant submitted his application for the fifth time in October 2009, he used a new application form and declared that he had no assets in hand. This resubmission was processed by another vetting officer who failed to locate previous return letters for reference and was not aware that the applicant owned a Mainland property. Copies of return letters of all applications were filed in date sequence and were normally not retrieved for reference by vetting officers.

3. The applicant resubmitted his application for the sixth time in January 2010 after rectifying the outstanding matters listed in the fifth return letter by the HD in December 2009. This resubmission was accepted and registration on the WL was made in March 2010.

Audit comments

4. Audit considers that the vetting officer who handled the fifth application would have been aware if the applicant owned a Mainland property had been required to make reference to previous return letters or if the officer had consulted her predecessor. The HD should consider requiring the applicants to make reference to previous return letters when resubmitting applications. As the eligibility of the application is in doubt, the HD should reassess the eligibility of this case before further processing.

Source: HD records

2.64 Audit considers that returning application forms to the applicants multiple times should be avoided. This will not only improve customer service to PRH applicants, but also reduce the administration work in handling resubmissions. The HD's processing efficiency can be enhanced if the re-processing of a revised application submitted by the same applicant by a different vetting officer can be obviated. The HD needs to take measures to streamline its processing of applications. The HD also needs to reassess the eligibility of Case 3 before further processing.

Deceased person records not promptly updated

2.65 Since 1995, the Registrar of Births and Deaths of the Immigration Department has provided the HD, on a monthly basis, with data of deceased persons. The HD conducts data matching with the names of applicants and family members registered on the WL. With effect from April 2009, the Estate Management and Maintenance System (EMMS) of the HD would capture the information of deceased persons provided by the Immigration Department, and such applications are barred from input of acceptance.

2.66 In accordance with the Guidebook for processing PRH applications, an Action Report for Registered Deceased Persons would be generated by the EMMS, listing out the deceased persons who are on the WL at various stages. The Administration Unit would issue the reports to different responsible units for action. The RCSU would handle the cases in the reports at the registration stage and the WLU at other stages. For different family sizes, the total net asset limits, maximum income limits and the flat sizes to be allocated are different. Therefore, the eligibility for and allocation of PRH may be affected for applicants with such deceased persons. Upon receipt of the Action Reports, action would be taken promptly to update all the necessary particulars in the WL records, especially at the investigation stage. The EMMS records would also be updated before passing the cases to other units for action.

2.67 Audit reviewed 10 cases of PRH applications selected from the Action Reports for Registered Deceased Persons and outstanding over 3 months (Note 10) with a view to identifying areas for improvement. In these cases, after receipt of

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Note 10: *Cases outstanding mean that the EMMS has captured the information that a person is deceased but the records are not yet deleted from the database.*

the Action Reports, an average of 116 days had elapsed before the HD initiated the first action (such as contacting the deceased's family members) and 127 days had elapsed before the deceased persons' names were deleted from the WL records.

2.68 Among the 10 cases examined, Case 4 illustrates that the WLU did not take prompt follow-up action to delete the name of the deceased person from the WL records.

Case 4

Deceased person record not promptly updated

1. The deceased person (an elderly family member of the applicant) passed away on 12 October 2011.

2. On 7 December 2011, the applicant was informed that a flat would be allocated to her.

3. The EMMS record was updated on 1 February 2012 but the WLU did not delete the record of the deceased person.

4. On the day of signing the tenancy agreement (7 May 2012), the applicant submitted the intake declaration form with a forged signature of the deceased person.

5. On 11 May 2012, an HD officer found that the elderly family member had passed away. The case was reported to the police.

6. The applicant was sentenced to 10 weeks' imprisonment (suspended for 2 years) and was fined $13,000.

7. On 9 July 2012, the flat was surrendered.

Source: HD records

2.69 In accordance with the Guidebook for processing the PRH applications, the HMs of the WLU should conduct random checking on approximately 5% of cases in the Action Report.

2.70 Audit reviewed the random check record for deceased persons of the WLU and found that there were no records showing that the checking was conducted regularly. For one team in the WLU, no checking of the records was conducted from July 2010 to May 2012. For another team, no checking of the records was conducted during the periods:

(a) June to November 2010;

(b) January to August 2011; and

(c) October 2011 to September 2012.

2.71 Table 12 shows the number of outstanding cases selected by the Application Sub-section for checking in June 2013. Audit found that the percentage of checking was only 4.4% (below that required by the Guidebook — see para. 2.69). Audit also noted that most cases selected for checking were new cases which had been outstanding for less than one month. However, cases which had been outstanding for 3 months or more were not selected for checking.

Table 12

Outstanding cases selected for checking by the Application Sub-section (June 2013)

	No. of months the case had been outstanding							
	0 month	**1 month**	**2 months**	**3 months**	**4 months**	**5 months**	**6 months**	**Total**
No. of outstanding cases	134	11	—	11	—	—	1	157
Cases selected for checking	6	1	—	—	—	—	—	7

Source: Audit analysis of HD records

2.72 In Audit's view, the HD needs to conduct the random checking of outstanding deceased records on a periodic basis to ensure that follow-up actions are taken promptly. The HD also needs to consider using a risk-based approach in selecting samples for checking. For example, all long-outstanding cases should be selected for checking.

Long time taken for random checking of income and assets

2.73 To deter false declarations by applicants, annual random checks on income and assets for 300 applications would be conducted by the Public Housing Resources Management Sub-section (PHRM) of the EMD of the HD (see organisation chart at Appendix A). Each year, the Applications Sub-section refers 120 newly registered applications (in registration stage under the purview of the RCSU — see Appendix C) and 180 applications in the process of flat allocation (in allocation stage under the purview of the LU — see Appendix C) to PHRM for checking. These 300 applications are randomly selected by the computer system. The checking of income and assets mainly includes:

(a) invitation of all household members aged 18 or above for interview and declaration of their income and assets for cases referred from the RCSU. No interviews are arranged for the referrals from the LU (Note 11);

(b) search of ownership of domestic property of the applicant and family members;

(c) search of ownership of vehicle of the applicant and family members; and

(d) business registration search of the applicant and family members, if they are self-employed.

Note 11: *To avoid complaints from the applicants who have recently been interviewed by the WLU and submitted the income certificates and documentary proofs for their assets, PHRM would mainly conduct paper search for cases referred from the LU and would not invite them for interview again.*

2.74 As agreed between PHRM and the Applications Sub-section at a meeting of August 2009, the investigation time by PHRM would be around three months. However, Audit noted that PHRM took more than three months on average to complete the random check of income and assets for an application. Table 13 shows the average case investigation time (Note 12) for the five years from 2008-09 to 2012-13.

Table 13

Average case investigation time for random checking of income and assets by PHRM (2008-09 to 2012-13)

Year	Average case investigation time (No. of days)	
	Referral from RCSU	**Referral from LU**
2008-09	109	96
2009-10	127	111
2010-11	135 (+43%)	110 (+72%)
2011-12	142	114
2012-13 (up to July 2013)	156	165

Source: Audit analysis of HD records

Note 12: *For this analysis, the investigation time for an application refers to the time between the date the case was received by PHRM and the date it was returned to the RCSU/LU.*

2.75 Audit noted that for the period 2008-09 to 2012-13 (up to July 2013), the average case investigation time increased significantly by 43% (from 109 to 156 days) and 72% (from 96 to 165 days) for referrals from the RCSU and the LU respectively. In 2012-13, the average case investigation time was more than five months (156 and 165 days for referrals from the RCSU and the LU respectively), exceeding the agreed timeframe of three months (see para. 2.74).

2.76 Audit conducted analyses of the case investigation time for random checking by PHRM for referrals from the RCSU and the LU (see Tables 14 and 15).

Table 14

Analysis of PHRM's case investigation time for referrals from the RCSU

Investigation time	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	Number of cases					
Up to 3 months	67	41	20	31	18	177
Over 3 to 6 months	45	54	82	53	53	287
Over 6 to 9 months	4	21	15	34	23	97
Over 9 months	4	4	3	2	8	21
Total	120	120	120	120	102 (Note)	582

Source: Audit analysis of HD records

Note: As at 31 July 2013, there were 18 outstanding cases.

Table 15

Analysis of PHRM's case investigation time for referrals from the LU

Investigation time	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	Number of cases					
Up to 3 months	95	68	66	78	24	331
Over 3 to 6 months	66	101	105	81	57	410
Over 6 to 9 months	9	10	5	20	49	93
Over 9 months	—	1	3	—	10	14
Total	170	180	179	179	140 (Note)	848

Source: Audit analysis of HD records

Note: As at 31 July 2013, 33 cases were still under investigation by PHRM.

2.77 As can be seen from Tables 14 and 15, during the period 2008-09 to 2012-13, there were 21 and 14 cases which took over nine months to complete for referrals from the RCSU and LU respectively.

2.78 Unduly long time taken by PHRM for random checking of income and assets would delay the PRH application and flat allocation process for those affected. Audit considers that the HD needs to:

(a) investigate into the reasons for the unduly long time taken by PHRM for the random checking which exceeded the agreed timeframe of three months (see para. 2.74), particularly the large increase in the average case investigation time in the past few years (see para. 2.75); and

(b) take measures to expedite PHRM's efforts to conduct the random checking.

Audit recommendations

2.79 **Audit has *recommended* that the Director of Housing should:**

(a) **consider suitably revising the Information for Applicants and the video clip to provide guidance to applicants on the availability and the proper use of the declaration forms provided by the HD;**

(b) **take measures to streamline the HD's processing of applications, in order to avoid frequent returning application forms to the applicants multiple times. For example, the HD should consider:**

(i) **communicating with applicants by telephone or interview as far as possible to take necessary follow-up actions;**

(ii) **providing applicants with clearer advice on the information required by the HD; and**

(iii) **requiring the applicants to make reference to previous return letters when resubmitting applications;**

(c) **take measures to ensure that the names of the deceased persons are promptly deleted from the WL for PRH;**

(d) **conduct the random checking of outstanding deceased person records on a periodic basis, so as to ensure that follow-up actions are taken promptly;**

(e) **consider using a risk-based approach in selecting samples for checking of outstanding deceased person records. For example, all long-outstanding cases should be selected for checking;**

(f) **investigate into the reasons for the unduly long time taken by PHRM for the random checking of income and assets, particularly the significant increase in the average case investigation time in the past few years; and**

(g) **take measures to expedite PHRM's efforts to conduct the random checking of income and assets.**

Response from the Administration

2.80 The Director of Housing agrees with the audit recommendations. He has said that:

(a) more guidance can be provided to the applicants. The HD will consider revising the "Information for Applicants" and the video clip to provide more guidance to applicants in respect of the declaration forms;

(b) the HD has put in place a system to contact the applicant by telephone or by interview if the application has been returned for more than two times. Subject to resources constraints, the HD will continue to do so as far as possible;

(c) the HD will strive to provide clearer advice to applicants. It will remind applicants to refer to previous return letters when resubmitting applications. HD staff have also been reminded to follow the timeframes and comply with the guidelines on income and assets checks; and

(d) to tighten monitoring and supervision, the investigator is required to submit written application with justifications to the supervising AHM and HM for extension of the investigation time to 4 months and 6 months respectively if a case cannot be completed within the 3-month timeframe.

PART 3: MAXIMISING THE RATIONAL UTILISATION OF PUBLIC RENTAL HOUSING FLATS

3.1 This PART examines the HA's measures to maximise the rational utilisation of PRH flats, focusing on the following areas:

(a) management and control of unoccupied flats (paras. 3.2 to 3.25);

(b) implementation of the Well-off Tenants Policies (paras. 3.26 to 3.41); and

(c) under-occupation of PRH flats (paras. 3.42 to 3.63).

Management and control of unoccupied flats

3.2 PRH flats are valuable housing resources and the vacant stock is an important source of supply of PRH flats for allocating to eligible applicants on the WL. It is both expensive and time-consuming to build a PRH flat. It is imperative that all PRH flats are fully utilised and their turnover is maximised. The HD manages a large stock of PRH flats. As at 31 March 2013, there were 727,958 PRH flats, of which 715,487 (98%) were let to 710,239 PRH households.

3.3 The LU under the Strategy Division is responsible for overseeing the overall utilisation and letting position of vacated flats. The EMD is responsible for the overall property management and maintenance of PRH. Estate Offices, Property Services Agents and District Tenancy Management Offices (DTMO) under the EMD are responsible for the management of vacant flats. After the tenants are vacated from PRH, the tenancy records in the Domestic Tenancy Management Sub-system (DTMS) would be updated by the DTMO. Through the DTMS, the LU would be notified of the availability of vacant flats for letting. The DTMO and Estate Offices are responsible, among others, for arranging intake of PRH tenants.

Unoccupied flats

3.4 As at 31 March 2013, there were 12,471 unoccupied flats, representing about 1.7% of the total stock of PRH flats. The HD classifies the unoccupied flats as "unlettable", "lettable vacant" or "under offer" flats (see Table 16).

Table 16

Classification of PRH flats
(2011 to 2013)

	Number of PRH flats as at:		
	31 March 2011	**31 March 2012**	**31 March 2013**
Occupied flats	692,329	706,780	715,487
Unoccupied flats			
(a) unlettable flats	5,902	6,072	4,370
(b) lettable vacant flats	6,658	7,078	4,137
(c) "under offer" flats	3,168	2,438	3,964
Subtotal	*15,728 (2.2%)*	*15,588 (2.2%)*	*12,471 (1.7%)*
Total	708,057	722,368	727,958

Source: HD records

3.5 According to the HD, the vacancy rate of PRH was 0.6%, which was lower than its pledge of 1.5%. However, Audit noted that in calculating the vacancy rate, the HD used the formula "number of lettable vacant flats divided by the lettable stock" and only counted the number of lettable vacant flats as vacant flats (i.e. 4,137/(727,958 − 4,370) as at 31 March 2013). The 4,370 unlettable

flats and 3,964 "under offer" flats, which were also not occupied by any tenants, had not been included as vacant flats in calculating the vacancy rate. Upon Audit's enquiry, the HD has explained that the purpose of the vacancy rate is to indicate the extent to which the HD has maximised the use of PRH resources. For those flats already "under offer", they are being offered to applicants and are expected to be taken up in the near future. As for unlettable flats, they are reserved for a purpose and are not available for letting to PRH applicants. The number of "under offer" and unlettable flats are in any case unavailable for further letting, and thus could not help indicate how well HD is doing in respect of maximising the use of PRH resources. However, for better monitoring of the vacant flats and how well the HA manages vacancy as a whole, Audit considers that the HD should disclose the number of "under offer" and unlettable flats when releasing information on the vacancy rate of the PRH.

Need to closely monitor "under offer" flats

3.6 Upon enquiry, the HD informed Audit in June 2013 that a PRH flat would be classified as "under offer" when an offer letter was sent by the LU to a prospective tenant who was invited to complete the sign-up formalities in the estate office. In other words, an "under offer" flat is pending take-up by tenants which, according to the offer letter, is to be completed within two weeks from the date of the letter. Regarding the large number of flats under offer (3,964) as at 31 March 2013, Audit had asked for the information of the termination date of their last tenancy in order to determine the vacancy period of these flats. In response, however, the HD said that it was unable to capture such information for the position as at 31 March 2013. This was because the majority of these flats had since been let out and the Applications Sub-section did not keep the last tenancy termination dates for flats that had already been let out. In the event, an ageing analysis for the vacancy periods of these flats could not be performed.

3.7 During site visits to three housing estates in mid-2013, Audit noted that, as at the dates of visit, there were 43 "under offer" flats that had been vacant for more than three months, with 14 more than a year. Audit further examined the distribution of "under offer" flats in all estates and noted that, as at 31 March 2013, nine estates each had more than 50 "under offer" flats.

3.8 Taking into account the long vacancy periods of the "under offer" flats noted during our site visits and the large number of such flats (see para. 3.7), Audit considers that the monitoring mechanism of "under offer" flats needs to be strengthened. As the LU is responsible for the allocation of flats while the EMD is responsible for their custody, physical upkeep and intake formalities, effective coordination between the LU and the EMD is required to avoid oversight in management control of these "under offer" flats. Audit also considers that the HD needs to speed up the letting of those "under offer" flats which have been vacant for a long time, for example by pooling these flats for the Express Flat Allocation Scheme (EFAS — see para. 3.9). Upon enquiry, the HD informed Audit in September 2013 that the "under offer" flats would be included as targets in pooling flats for the EFAS.

Speeding up the letting of long vacant flats

3.9 The HD has launched the EFAS since 1997 to speed up the letting of those unpopular or long vacant flats. The EFAS is conducted annually to invite eligible WL applicants to take up the less popular or long vacant flats. Flats offered for letting under the EFAS exercises include those unpopular flats with adverse "Environmental Indicator", such as loan shark/murder/suicide cases, flats at remote locations, and long vacant flats. Flats with vacant period over nine months are considered as long vacant flats for an EFAS pooling exercise. In the past three years (2010 to 2012), 2,400, 2,200 and 2,500 flats were pooled under the EFAS respectively.

3.10 The HD reported 4,137 vacant flats available for letting as at 31 March 2013 (see Table 16 in para. 3.4). An analysis of the vacancy periods for these vacant flats is shown in Table 17. It can be seen that many (887 or 21%) flats had been vacant for one year or more, and about 2% (30 + 46) for five years or more. Audit also found that there were a number of long vacant flats (i.e. vacant for over 9 months) but had not been put under any EFAS exercises. Out of the 887 flats which had remained vacant for over one year, 470 (53%) flats had not been included in previous EFAS exercises. The situation was unsatisfactory.

Table 17

Ageing analysis of vacant flats available for letting
(31 March 2013)

Period	Number of vacant flats	Number of flats not included in EFAS (Note 1)
Less than 1 year	3,250	(Note 2)
1 to less than 2 years	605	362
2 to less than 5 years	206	98
5 to less than 10 years	30 (887 (21%))	9
10 years or more	46	1
Total	4,137 (100%)	470

Source: Audit analysis of HD records

Note 1: EFAS exercises for the years 2008 to 2012 were taken into account in this analysis.

Note 2: There were 413 flats with a vacancy period of over 9 months. They might be considered for inclusion in the 2013 EFAS exercise.

Long time taken for refurbishment of some vacated flats

3.11 All vacant flats have to be refurbished before re-letting so as to bring the internal finishes and fitting-out of the flats up to a standard acceptable to the prospective tenants. Since 2006, the HD has issued guidelines to allow the re-letting and refurbishment processes to take place in parallel once a flat is vacated so that a vacant flat can be accepted by a prospective tenant as soon as possible and even before the refurbishment is completed. Normally, the whole process from allocation to intake was expected to be shortened from an average of 57 days to 34 days after a flat is vacated.

3.12 Estate staff will notify works staff about the out-going tenants' moving-out dates 7 days in advance and arrange joint inspections after the out-going tenants have moved out. Works staff will then issue the works order within 3 days. A flat will be available for advance allocation by the LU upon its physical recovery with works order issued. According to the HD's 2012-13 Corporate Plan, the target of the average turnaround time for vacant flat refurbishment should not exceed 44 days.

3.13 During the site visits to the estates, Audit selected some vacant flats for inspection. Some were Converted One Person (C1P — see para. 3.21) flats and some were normal PRH flats. Refurbishment was being carried out inside these flats. However, Audit noted that the refurbishment period (since tenants vacated from flats up to completion of refurbishment) was quite long (ranging from 5 months to more than 3 years) for these flats. Some examples are shown in Table 18.

Table 18

Refurbishment period for some flats selected for audit inspection (August 2013)

	Flat type	Vacant date	Works order	Refurbishment completion date
Flat 1	Normal PRH	Since September 2008	Issued in July 2011 but works not started until February 2012	March 2012
Flat 2	Normal PRH	Since May 2010	Issued in July 2011 but works not started until February 2012	March 2012
Flat 3	C1P	Since February 2012	Started in May 2013	July 2013
Flat 4	C1P	Since January 2013	Started in June 2013	July 2013
Flat 5	C1P	Since February 2013	Started in June 2013	July 2013

Source: HD records

3.14 The long refurbishment period (including the time pending refurbishment) which had kept these flats vacant for an unreasonably long time was not satisfactory. Upon enquiry, the HD informed Audit in September 2013 that:

(a) departmental guidelines had set out the timeframe for refurbishment work. On average, the HD was able to meet the pledge of completing refurbishment of vacant flats within 44 days;

(b) the progress of refurbishment works was under the monitoring of Senior Works Professional and Works Professional in the Bi-monthly Contract Meeting and Weekly Meeting respectively; and

(c) some vacant flats involved serious water seepage, structural repairs, re-roofing works above the flats and special technical arrangements that required more time for refurbishment. The cases mentioned in Table 18 were special or isolated cases where additional processing time was justified.

3.15 Audit considers that the HD needs to closely monitor the refurbishment period and take measures to minimise the vacancy period.

3.16 In the 1960s, domestic accommodations were allocated to shop tenants as staff quarters to facilitate their business operation. Tenancies of these flats were tied to the main tenancies. The need for providing tied flats as staff quarters to commercial tenants on operational grounds has been diminishing and, effective from 2010, allocation of tied flats would not normally be entertained. The HD has instructed that tied flats once recovered from shop tenants should be converted to domestic flats and returned to the LU for domestic letting. During the site inspection to an estate, Audit found that 16 tied flats had been vacated and recovered in mid-August 2012. In August 2012, the estate staff sought approval for their conversion to domestic flats. In October 2012, site visit was arranged and costs of conversion works were estimated. However, Audit's site inspection in end-May 2013 found that refurbishment works of these 16 flats had still not been completed.

3.17 Upon enquiry, the HD informed Audit in September 2013 that there was strong request from the shop tenants and the local District Council Councillor for minimising the disturbance while the refurbishment works of these flats above the shops were in progress. Therefore, the renovation work hours were restricted and works were carried out by more phases than usual, resulting in longer time for completion. A works order was issued in August 2013 and the conversion works was expected to be completed by end of September 2013. Audit considers that the HD needs to monitor the refurbishment works to facilitate early letting of the tied flats.

Monitoring of unlettable flats

3.18 The LU is responsible for overseeing the overall utilisation and letting position of vacant flats reserved. It monitors the reservation and de-reservation of flats. Different divisions of the HD are allowed to keep a pool of reserved flats to meet their operational needs (e.g. for relocating tenants affected by redevelopment). Some of these reserved flats are classified as "unlettable". Flats reserved for a prolonged period without imminent demand should be released to the LU for disposal. Currently, the Chief Housing Manager (Applications) is responsible for the overall monitoring of the vacant flats withheld from letting. For flats reserved for estate use for over two months, the LU would send a memo to the Regional Chief Manager (RCM) of the EMD to remind estates to promptly return surplus flats to the LU. Approval of the RCM is required for withholding vacant flats from letting over two months. Justifications and the expected "available date" for flat release should be endorsed by the RCM. As at 31 March 2013, there were 4,370 unoccupied flats (see Table 16 in para. 3.4) classified as unlettable due to various reasons. Table 19 shows an analysis of the vacancy period of these unlettable flats as at 31 March 2013.

Table 19

Analysis of the vacancy period of unlettable flats
(31 March 2013)

Period	Reasons of reservation (Note 1)							Total
	a	b	c	d	e	f	g	
	(No.)	(No.)	(No.)	(No.)	(No.)	(No.)	(No.)	(No.)
Less than 1 year	210	20	576	20	35	49	115	1,025
1 to less than 2 years	436	27	59	11	5	2	10	550
2 to less than 5 years	620	82	88	2	6	—	16	814
5 to less than 10 years	418	303	8	1	2	—	33	765
10 years or more	171	367	24	—	2	—	54	618
Unknown (Note 2)	12	8	60	218	181	1	118	598
Total	1,867	807	815	252	231	52	346	4,370

Source: HD records

Note 1: Reasons of reservation were:

(a) vacant Housing for Senior Citizen (HSC) Type 1 flats pending conversion to ordinary PRH;

(b) vacant C1P flats pending conversion to ordinary PRH;

(c) flats withheld from allocation for operational/management reasons;

(d) flats reserved by the Urban Renewal Authority;

(e) flats under conversion or structural repairs;

(f) flats for enforcement or maintenance of tenancy; and

(g) others (e.g. flats reserved for estate wardens, temporary reservation estate use, sample flats, etc.)

Note 2: The termination date of the last tenancy of these flats was not available in the DTMS. According to the HD, data analysis showed that they were new vacant flats or converted flats which did not have last tenancy termination dates.

3.19 As can be seen from Table 19, many flats had been vacant for more than one year for various reasons. Among the unlettable flats, 815 flats were withheld from allocation for "operational/management reasons". Upon enquiry, the HD informed Audit in September 2013 that 672 flats were frozen from letting due to redevelopment or conversion for HOS project. Audit noted that among the remaining 143 reserved flats, 109 (76%) had been reserved for more than one year and no evidence of reservation authority could be found for reserving 35 flats. Audit considers that the estate staff should indicate the expected period of reservation for the reserved flats so that management can properly monitor their use. Besides, there were 598 flats for which the vacancy periods could not be ascertained as their termination dates of the last tenancies were not available in the DTMS. Audit considers that the relevant period of vacancy of these flats should be readily available to facilitate management monitoring of such flats. The HD needs to strengthen the system for monitoring unlettable flats.

Delays in conversion of HSC and C1P flats

3.20 HSC is a hostel type of PRH with 24-hour warden service. It was first introduced in the 1980s originally for single elderly persons. Normally three tenants were housed in an HSC flat sharing the same kitchen, living room and/or toilet. Due to the unpopularity of these flats, a phasing-out programme to freeze the letting of certain HSC units was introduced in 2006 to convert the recovered units to normal PRH flats.

3.21 Prior to the introduction of HSC, the HD had converted normal flats into smaller units (C1P units) through internal partitioning in order to increase the supply of small flats for single-persons. Unrelated persons were allocated to these units and were required to share the same kitchen and toilet facilities. As there were often disputes among C1P tenants, a phasing-out programme of C1P units was introduced in 2000.

3.22 In 2004, in view of the slow progress of phasing out of C1P flats, the HD instructed that the last remaining tenants of those partially occupied flats should be actively encouraged to take up the entire flats. In Chapter 3 "Allocation of public rental housing flats" of the Director of Audit's Report No. 47 of October 2006, Audit recommended that the HD should formulate a long-term strategy, closely monitor the overall vacancy position, and convert for beneficial uses for the HSC units. In November 2010, the Internal Audit Unit of the HD also issued an audit

report on the management and control of vacant flats. The internal audit report stated that management had not drawn up an action plan for frozen HSC units and there were no proactive measures and schedule for phasing out the C1P units. Upon enquiry, the HD informed Audit in September 2013 that:

(a) over the past 6 years, the HD had been following the directive of the SHC to take proactive measures to encourage HSC tenants to transfer voluntarily. To achieve better results, all HSC Type 1 tenants had been included in the phasing-out programme since 2011; and

(b) upon review in February 2013, the SHC endorsed the management transfer of all non-elderly tenants of HSC Type 1 flats to further expedite the flat recovery for conversion to PRH flats. Through staff's concerted efforts, the number of non-elderly tenants in the HSC Type 1 units decreased from 163 at end 2012 to 129 in August 2013.

3.23 It can be seen from Table 19 in paragraph 3.18 that there were 807 C1P and 1,867 HSC flats which were classified as unlettable as at 31 March 2013. Many of them had been vacant for over 5 years. The HD needs to step up measures to expedite the implementation of the C1P and HSC phasing-out programmes.

Audit recommendations

3.24 **Audit has *recommended* that the Director of Housing should:**

(a) **step up the monitoring of "under offer" flats and unlettable flats, for example by increasing the frequency of the monitoring checks;**

(b) **expedite the letting of long vacant flats, including the "under offer" flats, by including them in the EFAS;**

(c) **closely monitor the progress of refurbishment works for vacated flats. In particular, cases involving long periods of refurbishment should be reported to the senior management for attention;**

(d) **enhance the monitoring mechanism for flats which have remained unlettable for a long time;**

(e) **require estate staff to indicate the expected period of reservation for reserving flats as unlettable flats so that the senior management can closely monitor the use of these reserved flats; and**

(f) **expedite the phasing out of the HSC and C1P flats and their conversion into normal PRH flats for allocation.**

Response from the Administration

3.25 The Director of Housing agrees with the audit recommendations. He has said that:

(a) system enhancement will be completed in October 2013 to generate batch report for monitoring the conversion progress of C1P and HSC flats; and

(b) about 90% of the C1P tenants are elderly and the HD will continue to encourage them to move to another flat voluntarily.

Implementation of the Well-off Tenants Policies

Objective of the Well-off Tenants Policies

3.26 The Government's housing policy is to provide PRH for low-income families who cannot afford private rental accommodation. To ensure the rational allocation of limited public housing resources, the HA encourages PRH households who have benefited from a steady improvement in their income and assets to return their PRH flats to the HA for reallocation to families that are more in need of the PRH flats. In 1987 and 1996, the HA implemented respectively the Housing Subsidy Policy (HSP) and the Policy on Safeguarding Rational Allocation of Public Housing Resources (SRA). The HSP and the SRA are collectively referred to as "Well-off Tenants Policies". Through the HSP, the HA aims to reduce the housing subsidy to those tenants with income beyond the laid-down limits. For the SRA, the

HA aims to review the wealthy tenants' continuing eligibility for PRH. Implementing the Well-off Tenants Policies would enhance the turnover rate of PRH flats to avail more flats for the needy families and ensure equitable allocation of PRH resources.

3.27 The HSP requires tenants who have been living in PRH for 10 years or more to declare their household income biennially. Tenants with a total household income:

(a) of two to three times the Waiting List Income Limit (WLIL) are required to pay 1.5 times net rent plus rates; and

(b) exceeding three times the WLIL, or those tenants who choose not to declare their household income, are required to pay double net rent plus rates.

The subsidy income limits (above which the tenants are required to pay additional rent) are subject to annual review. The table of subsidy income limits effective from 1 April 2013 is shown at Appendix F.

3.28 According to the SRA, households paying double rent under the HSP have to declare assets biennially at the next cycle of declaration (two years from the last declaration under the HSP). If their total household income and net asset value both exceed the prescribed limits, or those who choose not to declare their assets, they are required to vacate their PRH flats. Households who are required to vacate their PRH flats but have a temporary housing need may stay in the flats for a period of not more than 12 months, during which double rent or market rent, whichever is the higher, is charged.

3.29 The net asset limits (above which the tenants paying double net rent plus rates are required to vacant their PRH flats) are subject to annual review. The net asset limits are currently set at about 84 times of the 2013-14 WLILs. The table of net asset limits effective from 1 April 2013 is shown at Appendix G.

Preparation for biennial declarations

3.30 Both income and asset declaration exercises are carried out yearly, covering different batches of tenants. For the years 2012-13 and 2013-14, among the total of 710,000 PRH households under the HA, about 343,000 (48%) households were required to declare income and 2,500 (0.4%) households were required to declare assets under the Well-off Tenants Policies.

3.31 The declaration cycle normally starts from 1 April of the year and ends on 31 March of the following year. The HD's local estate offices are responsible for sending and collecting the declaration forms for the biennial income and assets review. The programmes of the two declaration exercises which are generally similar are as follows:

(a) by 1 April, estate offices issue declaration forms to affected tenants;

(b) before end of May, tenants submit the completed declaration forms to estate offices;

(c) by 1 September, estate offices perform preliminary vetting of income declarations and refer doubtful declarations to PHRM for investigation; and

(d) examination of all declarations and investigation of doubtful declarations by estate offices and PHRM, and notification of the assessment results to tenants by estate offices before end of January of the following year. The new rent will become effective on 1 April of the following year.

Verification of reasons for HSP exemption

3.32 All tenancy information is maintained in the DTMS. It contains some essential data fields which facilitate the HSP implementation (e.g. date of initial residence, rent review category, exemption reason, etc.). Since these data fields will be used for selection of tenancies for HSP review, it is important to check the accuracy of these data fields before each HSP cycle.

3.33 Under the HSP, households who have lived in PRH for 10 years or more are subject to income review. Households with less than 10 years' residence in PRH should hold rent review category "HSP_NOT_DUE" in DTMS indicating that they are not due for income review. The following household categories were exempted from having to declare their income and assets:

(a) households on shared tenancies;

(b) households with all members receiving Comprehensive Social Security Assistance; and

(c) households in which all members are over 60 years old.

As at July 2013, there were about 43,300 households with exemption reasons entered in the DTMS.

3.34 For households to be exempted from the HSP, an exemption indicator is entered in the DTMS so that these households will not be extracted in HSP cycles. Audit however noted during site visits to estates that some households should be subject to HSP review but were excluded because the exemption indicator was incorrectly input or had not been updated. Examples (Cases 5 and 6) are given at Appendices H and I respectively.

3.35 Upon Audit enquiry, the two identified cases were promptly rectified by the estate staff. In July 2013, the HD management staff had further reviewed similar cases and, as a result, amended the exemption codes of some 160 cases. Audit considers that, in future, the HD needs to take measures to ensure that all exemption indicators in the DTMS are correct for the proper implementation of the HSP.

Review of the Well-off Tenants Policies

3.36 As at 31 March 2013, 20,445 (3%) of PRH households were paying additional rent or market rent under the Well-off Tenants Policies. Among them, 18,109 households were paying 1.5 times rent, 2,321 were paying double rent, and 15 were paying market rent.

3.37 According to the Hong Kong 2011 Population Census Report, of the 719,511 PRH households in 2011, 188,877 (26%) had income of $20,000 or more per month (see Table 20 for details) which had exceeded the WL income limit of $18,310 per month for a 3-person household (Note 13) in 2013-14. Audit noted that the median monthly income for all domestic households in Hong Kong was $20,200 in 2011. It can also be seen from Table 20 that 116,397 (16%) of the PRH households had income of $25,000 or more per month which was close to the WL income limit of $25,360 per month for a 5-person household (Note 14) in 2013-14. It appears that many of these PRH households had already benefited from considerable improvement in their income over the years. As mentioned in paragraph 3.26, the objective of the Well-off Tenants Policies is to encourage the better-off PRH households to return their PRH flats to the HA for reallocation to families that are more in need of subsidised housing. The above analysis shows that more needs to be done in order that this objective can be realised and the scarce PRH resources can be better utilised. In this connection, Audit notes that the HOS has been re-launched since 2012-13. The HD may explore ways to encourage these well-off PRH tenants to purchase HOS flats.

Note 13: *On average, a PRH household comprised 2.85 persons as at 31 March 2013.*

Note 14: *As at 31 March 2013, 97% of the PRH households comprised not more than 5 persons.*

Table 20

Distribution of PRH household income
(2011)

Income ($)	Number of PRH households		
Less than 8,000	214,651		
8,000 to 9,999	71,767		
10,000 to 14,999	137,059		
15,000 to 19,999	107,157		
20,000 to 24,999	72,480		188,877
25,000 to 29,999	46,349	116,397	
30,000 to 39,999	46,746		
40,000 to 59,999	19,684		
60,000 to 79,999	2,443		
80,000 to 99,999	702		
100,000 or more	473		
Total	719,511		

Source: Hong Kong 2011 Population Census Report

3.38 Audit also notes that the current rent of PRH is far below the market rent. For example, for the urban district, the rent (inclusive of rates and management fee) is currently set at $64.4 per square metre (internal floor area). Therefore, the 1.5 times or double net rent plus rates under the HSP (see para. 3.27) might not be able to induce the well-off tenants to vacate the PRH flats.

3.39 The Well-off Tenants Policies have been implemented for many years (the HSP since 1987 and the SRA since 1996 — see para. 3.26). In view of the long WL and the increasing AWT for PRH in recent years, Audit considers that the HA needs to critically review the Policies to see whether the various parameters of the HSP and the SRA (see paras. 3.27 to 3.29) can be fine-tuned for further improvements. In this regard, Audit notes that the Well-off Tenants Policies have been included as one of the key areas for examination under the Long Term Housing Strategy Review (see paras. 5.4 to 5.6).

Audit recommendations

3.40 **Audit has *recommended* that the Director of Housing should:**

(a) **take measures to ensure that all exemption indicators in the DTMS are correctly recorded;**

(b) **critically review the Well-off Tenants Policies to see whether the various parameters of the HSP and the SRA can be fine-tuned for further improvements; and**

(c) **explore ways to encourage well-off PRH tenants to purchase HOS flats.**

Response from the Administration

3.41 The Director of Housing agrees with the audit recommendations. He has said that:

(a) instruction has been issued to remind estate staff to promptly update irregular cases and records in the DTMS and would include tenancies of Elderly Priority Scheme and Shared Tenancies for purification exercise before starting the new HSP declaration cycle;

(b) the HD will consider offering well-off PRH tenants priority to purchase HOS flats when the new HOS programme is launched later; and

(c) "Well-off Tenants Policies" is one of the discussion items of the LTHS Steering Committee (see also paras. 5.4 to 5.9). The Steering Committee has taken note that there are divergent views on the Policies in the community. The public consultation document on LTHS further invites public's views on the Policies and the collected views will be passed to HA for consideration.

Under-occupation of public rental housing flats

Background

3.42 The HA's long-standing policy is to allocate PRH flats to households having regard to their sizes under the established allocation standards. The current allocation standard of PRH flats is no less than 7 square metres (m^2) of internal floor area per person. Due to subsequent moving-out, decease, marriage or emigration of some family members, the remaining members may enjoy more living space than is allowed under the prevailing under-occupation (UO) standards, rendering the family an under-occupied household (UO household). The UO standards vary with the household sizes. The prevailing UO standards were established in 1992.

3.43 Public housing resources are being keenly sought after by those in need. The HA has put in place a policy requiring a household with living space exceeding the UO standards to move to another PRH flat of appropriate size. According to the HD, the prevailing UO standards are more generous than the maximum allocation standards used in the allocation of PRH flats, in order to avoid rendering households with a small change in the number of family members as UO households (see Table 21).

Table 21

Maximum allocation standards and UO standards of PRH flats

Household size (No. of persons)	1	2	3	4	5	6
Maximum allocation standard (internal floor area (m^2))	20	32	35	42	43	52
UO standard (internal floor area (m^2))	> 25	> 35	> 44	> 56	> 62	> 71
Most serious UO threshold (up to September 2013) (internal floor area (m^2))	> 34	> 68	> 102	> 136	> 170	> 204

Source: HD records

3.44 In 2007, the HD draws up a transfer priority list based on the UO households' living density and UO duration. From May 2007 to October 2010, households with living density exceeding 35 m^2 per person would be classified as most serious (MS) cases, and households with disabled members or elderly members aged 60 or above had been accorded a lower priority. The MS cases were placed on the top of the transfer priority list while households with disabled or elderly members at the bottom of the UO list. The HD does not require mandatory transfer for non-MS UO cases. From November 2010 to September 2013, the MS UO threshold was changed to 34 m^2 per person.

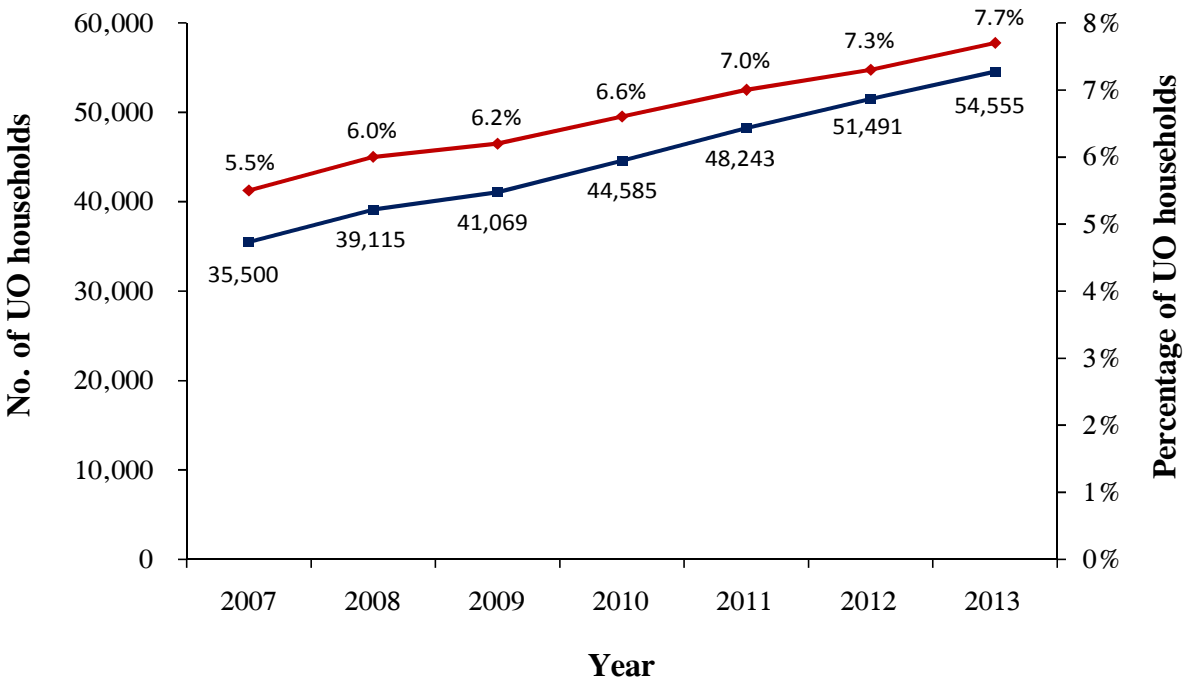
3.45 Up to September 2013, a total of four housing offers would be given to the MS UO households on transfer. If the household concerned refuses all the four housing offers without justified reasons, its existing tenancy would be terminated by a notice-to-quit. To provide incentives for households to accept offers of smaller flats, the HA would give the households Domestic Removal Allowance and opportunities to transfer to new estates. The HD also offers the same incentives to non-MS UO households on transfer to smaller flats.

Inadequate efforts to tackle the UO issue

3.46 In the past seven years, the number of UO households increased by 54% from 35,500 in 2007 to 54,555 in 2013. The percentage of the number of UO households to the total number of PRH households also increased from 5.5% in 2007 to 7.7% in 2013. Figure 4 shows the increasing trend of the number and percentage of the UO households.

Figure 4

Number and percentage of UO households (2007 to 2013)



Source: Audit analysis of HD records

3.47 Table 22 shows an analysis of the number of UO households and the extent of UO as at 31 March 2013. It can be seen that, as at 31 March 2013, 20,845 (38%) of the 54,555 UO households were occupying flats which had exceeded their maximum allocation standards by 50%. In particular, 1,458 (3%) UO households were occupying flats which had far exceeded their maximum allocation standards by 100%.

Table 22

Number of UO households and the extent of UO
(31 March 2013)

	No. of households occupying flats which exceeded their maximum allocation standards by:						
Household size (No. of persons)	**≦50% (No.)**	**Actual flat size (m^2)**	**>50%-100% (No.)**	**Actual flat size (m^2)**	**>100% (No.)**	**Actual flat size (m^2)**	**Total number of UO cases**
1	5,064	>25-30	16,166	>30-40	1,331	>40-68	22,561
2	23,386	>35-48	1,223	>48-62	36	>64-84	24,645
3	4,801	>44-52	973	>53-70	48	>70-88	5,822
4	276	>56-63	422	>63-83	9	>85-88	707
5	99	>62-64	513	>65-83	34	>87-103	646
6	84	>71-78	90	>78-99	—	—	174
Total	33,710		19,387		1,458		54,555

47,206

20,845

Source: *Audit analysis of HD records*

Remarks: *The maximum allocation standards vary with the household sizes (see Table 21 in para. 3.43).*

3.48 Audit analysed the household size of the general applicants on the WL as at 31 March 2013 (see Table 23). It can be seen that a large majority (100,491 or 85.9%) of the 116,927 applicants' households had 2 to 4 persons.

Table 23

Households size of general applicants on the WL
(31 March 2013)

Household size (No. of persons)	Number of applicants	Percentage
1	9,951	8.5%
2	42,293	36.2%
3	34,765 (100,491)	29.7% (85.9%)
4	23,433	20.0%
5	5,088	4.4%
6	1,116	1.0%
7 or more	281	0.2%
Total	116,927	100%

Source: Audit analysis of HD records

3.49 According to the HD's allocation standards, flats of internal floor area of about 22 m^2 can be allocated to families with 2 or 3 members, and flats of internal floor area of about 30 m^2 can be allocated to families with 3 or 4 members. Table 23 shows that there was a great demand (100,491 applicants) for such flats of 22 m^2 to 30 m^2 (under the current allocation standards). However, 47,206 one-person or two-person UO households were occupying flats of 25 m^2 to 84 m^2 (see Table 22). Audit further noted that the majority of one-person UO

households were occupying flats intended for 3 to 7 persons, and the majority of two-person UO households were occupying flats for 3 to 9 persons, and thus many of these UO flats can be better utilised. The HD needs to take more rigorous action to deal with the large number of outstanding UO cases.

3.50 Audit also found that, as at 31 March 2013, among the 54,555 UO households, 42,164 (77%) cases had remained unresolved for two years or more. In particular, 9,224 (17%) cases had remained unresolved for 10 years or more. An ageing analysis of the UO cases is shown in Table 24.

Table 24

Ageing analysis of UO cases
(31 March 2013)

Period	No. of households	Percentage
Less than 2 years	12,391	23%
2 to less than 4 years	10,920	20%
4 to less than 6 years	10,491	19%
6 to less than 8 years	6,640 (42,164)	12% (77%)
8 to less than 10 years	4,889	9%
10 years or more	9,224	17%
Total	54,555	100%

Source: Audit analysis of HD records

Slow progress in dealing with MS cases

3.51 In 2007, the HA endorsed measures to deal with the UO households in order of priorities beginning with handling those MS cases. As at 31 March 2013, about 3% (1,765) of the 54,555 UO households were classified as MS cases.

3.52 Audit noted that among the 1,765 MS cases, 749 (43%) had remained outstanding for two years or more. Table 25 shows an ageing analysis of outstanding MS cases.

Table 25

Analysis of outstanding MS cases
(31 March 2013)

Period	No. of households	Percentage
Less than 1 year	714	40%
1 to less than 2 years	302	17%
2 to less than 3 years	710	40%
3 to less than 4 years	21	1%
4 to less than 5 years	2	1%
5 years or more	16	1%
	749	43%
Total	1,765	100%

Source: Audit analysis of HD records

3.53 Audit also noted that in about one-third (585) of the 1,765 MS cases, the tenants concerned had not been given any transfer offers by the HD. Of these 585 cases, 91 had been MS cases for two years or more. Upon enquiry, the HD informed Audit in September 2013 that the 585 MS UO households without offers might be attributed to their recently falling into the MS UO category or lack of suitable flats for transfer within the same estate or in estates within the same District Council constituency. Audit considers that the HD should review all outstanding MS cases periodically, paying particular attention to those long-outstanding cases and take appropriate follow-up actions.

Transfer of UO households

3.54 Over the past six years, Audit noted that only 5,512 UO households (i.e. an average of 919 households a year) were successfully transferred by the HD (see Table 26).

Table 26

Successful transfer of UO households
(2007-08 to 2012-13)

Period	Number of MS cases (a)	Number of non-MS cases (b)	Total (c) = (a) + (b)
2007-08	422	127	549
2008-09	446	557	1,003
2009-10	472	501	973
2010-11	430	329	759
2011-12	370	817	1,187
2012-13	365	676	1,041
Total	2,505	3,007	5,512

Source: HD records

3.55 Up to September 2013, the HA's practice was that a maximum of four housing offers would be given to a MS UO household within two years. The household would be subject to termination of the existing tenancy if all four housing offers were refused without justified reasons. The HD also encourages those non-MS UO households to move to smaller flats. Audit analysed the number of housing offers that had been given to UO households as at 8 June 2013 (see Table 27).

Table 27

Housing offers given to UO households
(8 June 2013)

Number of housing offers given	Number of MS cases (a)	Number of non-MS cases (b)	Total (c) = (a) + (b)	
1	567	468	1,035	
2	357	320	677	
3	179	250	429	
4	69	147	216	262
5 – 8	8	38	46	
Total	1,180	1,223	2,403	

Source: Audit analysis of HD records

3.56 Audit noted that, out of the 54,555 UO households, only 2,403 (4%) households had been given housing offers. Out of these 2,403 households, 262 (11%) had already been given four or more housing offers. Case 7 gives an example. Upon enquiry, the HD informed Audit in September 2013 that:

(a) in line with the existing policy, only MS UO cases with refusal of 4 offers without justified reasons would have their tenancies terminated. Out of 262 cases with 4 or above offers made, only 77 cases were MS UO cases. Among these 77 MS UO cases, 35 cases had already accepted the offer as at 8 October 2013; and

(b) taking into consideration the uniqueness of each case, special approval had been granted for those deserving MS UO cases for extra offers whereas some MS UO cases were resolved after addition of family members.

Since the implementation of the MS UO policy in 2007 and up to August 2013, the HD had issued notices-to-quit to 4 MS UO households. Subsequently, one tenancy of an MS UO household (upon giving six housing offers) was terminated and three other cases were rectified.

Case 7

More than 4 housing offers given to an MS UO household

1. The tenant (single non-elderly person) had stayed in the UO flat (with internal floor area of 34.44 m^2) since February 2007. The HD gave the tenant six housing offers from July 2011 to March 2013. The tenant did not turn up at the estate office for three offers. For the other two offers, the tenant refused to transfer to an old estate and requested extra space. In August 2013, the tenant eventually accepted the sixth offer.

2. Upon enquiry, the HD informed Audit in September 2013 that one of the offers was counted as reasonable refusal and the RCM had granted an extra housing offer to the tenant who eventually accepted it with tenancy commenced in mid-August 2013.

Source: HD records

UO households each occupying more than one PRH flat

3.57 The HD may allocate two or more PRH flats to a large household if a large PRH flat is not available at the time of allocation. As at 31 March 2013, there were 2,405 UO households each occupying more than one flat (see Table 28). In particular, there were 9 one-person households each occupying two flats, and 224 two-person households each occupying two flats.

Table 28

Number of UO households each occupying more than one PRH flat
(31 March 2013)

No. of flats being occupied	Household size (No. of persons)						
	1	**2**	**3**	**4**	**5**	**6**	**Total**
Two flats	9	224	783	583	624	173	2,396
Three flats	—	—	—	1	7	1	9
Total	9	224	783	584	631	174	2,405

Source: Audit analysis of HD records

3.58 Audit examined a sample of 10 UO households each occupying more than one flat and noted that there were cases in which the HD had not taken adequate action. Case 8 is an example.

Case 8

UO household occupying more than one flat

1. In November 1980, the HD allocated two flats to the household with seven family members. The internal floor area of each flat is 23.13 m^2 (i.e. 46.26 m^2 in total).

2. From 1995 to 2010, the tenant applied for the deletion of five family members on grounds of their marriage or departure from the premises.

3. In June 2013, Audit visited the responsible estate office and reviewed the tenancy file concerned. Audit noted that the remaining two family members (who are husband and wife) had been occupying two flats since May 2010. However, the HD had not taken any action on this UO household with two flats as it was not classified as an MS case under the existing policy.

Audit comments

4. In view of the long WL and the fact that public housing resources are valuable and heavily subsidised, Audit considers that the HD should step up its efforts to persuade the households occupying two or more flats to surrender at least one flat.

Source: HD records

3.59 Upon enquiry, the HD informed Audit in September 2013 that:

(a) of the identified 9 one-person households (see Table 28 in para. 3.57), 1 flat had been recovered while 1 household had become non-UO category upon addition of other family members. The remaining 7 one-person households were either elderly or disabled, i.e. exempted cases under the Prioritised UO policy. The HD would continue to persuade these households to surrender one of the flats or transfer to a flat of suitable size; and

(b) according to the former UO policy, the 224 two-person households occupying 2 flats (see Table 28), including the household of Case 8, were regarded as normal UO households. Upon implementation of the enhanced UO policy in October 2013, management transfer would be arranged for some of these households who have exceeded the new Prioritised UO standards.

Audit appreciates the difficulties encountered by the HD in executing its policy intentions. However, the HD needs to step up its efforts to persuade UO households each occupying two or more flats to surrender at least one flat, or transfer to flats of appropriate size.

Latest developments

3.60 In June 2013, the HA endorsed new arrangements for tackling UO in PRH which would take effect from October 2013, as follows:

(a) revising the Prioritised UO threshold by making reference to a set of prescribed internal floor areas according to family sizes:

Household size (No. of persons)	1	2	3	4	5	6
Prioritised UO threshold (internal floor area (m^2))	> 30	> 42	> 53	> 67	> 74	> 85

(b) excluding households with disabled or elderly members aged 70 or above from the UO list;

(c) placing households with elderly members aged 60 or above but below 70 at the end of the UO list for transfer until the next review;

(d) giving a maximum of three housing offers to new Prioritised UO households in the residing estate or other estates in the same District Council constituency area; and

(e) giving Domestic Removal Allowance upon transfer to smaller flats.

3.61 Out of the 54,555 UO cases as at 31 March 2013, about 26,300 (48%) involved elderly aged 70 or above, or disabled members and would not be regarded as UO cases under the new policy effective from 1 October 2013. Comparing with the current standards for the MS cases, more cases would fall into the prioritised list of MS cases, making a total of 7,581 MS cases (including the existing 1,765 MS cases). Given the increase in number of MS cases and the rising trend of UO households in recent years, the HA needs to expedite its efforts in dealing with the MS cases.

Audit recommendations

3.62 **Audit has *recommended* that the Director of Housing should:**

(a) **step up the HD's efforts in tackling the UO issue, paying particular attention to long-outstanding UO households;**

(b) **expedite the HD's efforts in dealing with the MS cases, paying particular attention to long-outstanding MS cases;**

(c) **consider terminating the existing tenancies of those MS UO households who refused all the housing offers without valid reasons; and**

(d) **make greater efforts to persuade UO households each occupying two or more flats to surrender at least one flat, or transfer to flats of appropriate size.**

Response from the Administration

3.63 The Director of Housing agrees with the audit recommendations. He has said that:

(a) the SHC endorsed in 2007 a phased approach in handling UO households and defined the MS UO standard. Having regard to the shortage of small flats, arranging transfer of all UO households was not practicable and would be at the expense of the singleton applicants of the WL as well as other rehousing categories such as estate clearance and Compassionate Rehousing. The UO policy was subsequently reviewed by SHC in 2010 and 2013 which further endorsed the phased approach to tackle MS UO cases first by lowering the yardsticks for management transfer;

(b) majority of the long-outstanding UO cases belong to the elderly or disabled categories, i.e. non-MS UO cases; and

(c) upon implementation of the revised Prioritised UO thresholds in October 2013, the HD would exert greater efforts to arrange management transfer for those households occupying 2 or more flats with living density exceeding the prescribed thresholds.

PART 4: TACKLING ABUSE OF PUBLIC RENTAL HOUSING

4.1 This PART examines the HA's measures to tackle abuse of PRH, focusing on the following areas:

(a) checking of eligibility of applicants (paras. 4.2 to 4.18);

(b) processing of household declarations under the Well-off Tenants Policies (paras. 4.19 to 4.36);

(c) flat inspections under the Biennial Inspection System (paras. 4.37 to 4.52); and

(d) enforcement actions (paras. 4.53 to 4.69).

Checking of eligibility of applicants

4.2 In applying for PRH, the applicant must submit the completed application form together with the required supporting documents to the Applications Sub-section for preliminary vetting of his eligibility for registration. Vetting officers in the RCSU then check if the information and documents are consistent with the income and assets declared and whether the amounts meet the eligibility criteria.

4.3 In completing the application form, the applicant and all family members (including those aged below 18) are required to declare:

(a) their average monthly income; and

(b) the net value of assets they own, including:

(i) land;

(ii) landed properties;

(iii) vehicles;

(iv) taxi/public light bus licences;

(v) investments (Note 15);

(vi) business undertakings; and

(vii) deposits and cash in hand (Note 16).

Supporting documents for preliminary vetting

4.4 Audit notes that, while the applicants are required to provide supporting documents relating to the declared income and assets, in practice, supporting documents relating to investments and deposits (items (v) and (vii) of para. 4.3(b)) are exempted for pre-registration vetting.

4.5 Upon Audit's enquiry in July 2013, the HD said that the reasons behind the exemption of submission of supporting documents for investments and deposits were that:

(a) although no supporting documents were required at this stage, a declaration on the net asset value had to be submitted together with the application. Such arrangement would strike a balance between

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Note 15: *These include listed shares, bonds, futures, paper gold, certificates of deposits, deposits with brokers, mutual fund and unit trust fund, etc. The value of these investment instruments is calculated at their closing price per unit as at the date of declaration. In addition, savings or investment-linked insurance schemes are also included. The present cash value of these insurance schemes should be reported.*

Note 16: *These include, in both local and foreign currencies, all fixed and savings/current accounts deposits, and cash in hand at a value of HK$5,000 or above, and the amount that has been withdrawn or can be withdrawn from Mandatory Provident Fund/Provident Fund, as at the date of declaration.*

streamlining the application and vetting procedures and safeguarding against false statements by applicants, and was considered to be sufficient at the registration stage; and

(b) at the interview stage, applicants were required to produce supporting evidence on investments and deposits. If HD staff had any suspicion, he would ask applicants to produce evidence on investments and deposits as at the date of application for checking.

4.6 Audit considers that the HD's justifications for the exemption from submitting supporting documents for investments and deposits may need to be revisited for the following reasons:

(a) investments and deposits are the most common types of assets usually possessed by PRH applicants. It is questionable why supporting documents are required for other assets that are seldom possessed by low-income applicants (e.g. land and taxi), but not required for assets they usually possess;

(b) the explanations given by the HD (see para. 4.5) can equally apply to all types of declarable assets. It failed to explain why investments and deposits should be exempted;

(c) if supporting documents are required to be submitted for investments and deposits, the applicant will need to provide passbooks and bank statements. These documents would help verify the accuracy of other financial information provided by the applicants, e.g. monthly income and other assets; and

(d) if false declarations relating to value of investments and deposits at the date of application are found at the interview stage, the applicant concerned might be prosecuted and have his application cancelled. Submission of supporting documents at the date of application for investments and deposits will deter applicants from taking the risk of making false declarations. An illustration is given in Case 9.

Case 9

False declaration on bank deposits reported

1. The applicant and his family applied for PRH in March 2009. He and his wife declared on the application form that their assets only included deposits and cash in hand of some $2,000 and $960 respectively. The case was registered in May 2009.

2. The case was due for investigation in April 2012. During the vetting interview, the applicant and his wife provided their bank passbooks for checking, which showed that the deposits on the application date had significantly exceeded the amounts declared on the application form, and had also exceeded the applicable asset limit for applying PRH.

3. The application was cancelled and referred to the Prosecutions Section for action in May 2012 on grounds of making false declaration.

Audit comments

4. The applicant and his wife might not make the mistake or false declaration if they were required to submit supporting documents at the date of application for the amount of deposits declared in the application form.

Source: HD records

4.7 Audit considers that the HD needs to require applicants to submit supporting documents for major types of declarable assets at the date of application for preliminary vetting (see also para. 4.60).

In-depth checking of selected applications

4.8 As mentioned in paragraph 2.73, to deter false declarations of applicants, random checks on income and assets for some applications are conducted by PHRM. Each year, the Applications Sub-section refers 120 newly registered applications and 180 applications in the process of flat allocation to PHRM for in-depth checking.

4.9 The false declaration rate detected by PHRM varied between referrals from the RCSU and LU as shown in Tables 29 and 30 respectively.

Table 29

Results of PHRM checking on new applications
(2008-09 to 2012-13)

	No. of cases checked	No. of cases with false declarations detected (%)		Enforcement action by RCSU	
				No. of cases with application cancelled	No. of cases referred to Prosecutions Section
2008-09	120	1 (0.8%)		1	1
2009-10	120	7 (5.8%)		7	7
2010-11	120	11 (9.2%)	67	11	11
2011-12	120	12 (10.0%)		12	12
2012-13 (up to 31.7.2013)	102 (Note 1)	36 (35.3%)		15 (Note 2)	15 (Note 2)
				46	46

Source: Audit analysis of HD records

Note 1: As at 31 July 2013, there were 18 outstanding cases.

Note 2: As at 31 July 2013, the RCSU was following up 21 cases returned from PHRM.

Table 30

Results of PHRM checking on applications in the process of flat allocation (2008-09 to 2012-13)

	No. of cases checked (Note 1)	No. of cases with false declarations detected (%)	Enforcement action by WLU	
			No. of cases with application cancelled	No. of cases referred to Prosecutions Section
2008-09	170	2 (1.2%)	1	0
2009-10	180	0 (0%)	0	0
2010-11	179	1 (0.6%)	0	0
2011-12	179	3 (1.7%)	2	2
2012-13 (up to 31.7.2013)	140 (Note 2)	3 (2.1%)	0 (Note 3)	0 (Note 3)
		9	3	2

Source: Audit analysis of HD records

Note 1: In some years, less than 180 cases were checked, e.g. only 170 cases in 2008-09. It was because offer letters were issued to some selected cases before checking, and the relevant files were passed to in-take office for action. The HD did not select additional cases to make good the shortfalls.

Note 2: As at 31 July 2013, 33 cases were still under investigation by PHRM.

Note 3: As at 31 July 2013, the WLU was following up 1 case returned from PHRM.

4.10 Tables 29 and 30 show that:

(a) newly registered applications had a high rate of false declaration detected (35% in 2012-13) as compared with applications in the process of flat allocation (2% in 2012-13); and

(b) the rates of detected false declarations for both types of applications were increasing in recent years (particularly 2012-13).

4.11 Audit notes that the HD only selects a small sample of applications for in-depth checking of PRH applicants (120 from newly-registered applications and 180 from applications in the process of flat allocation) each year. In total, only 300 applications a year were selected for in-depth checking, representing only a small percentage of the number of applications on the WL. By comparison, the HD selects, on average, some 3,700 cases a year for checking by PHRM on income and assets declared by households under the Well-off Tenants Policies (see para. 4.27). In view of the high and increasing rates of detected false declaration from in-depth checking of new applicants, the HD needs to consider increasing the sample size for checking by PHRM.

4.12 Audit also noted that, in checking cases referred from the LU, there were shortfalls below the selected number of 180 cases, due to files in use for in-take procedures (see Note 1 to Table 30). Given the small sample size, Audit considers that there is a need to select additional cases to make good the shortfalls.

Follow-up actions on false declarations

4.13 New applications with false declarations detected by PHRM will be passed back to the RCSU for follow-up actions (such as cancellation of application and referral to the Prosecutions Section). Applications in the process of flat allocation (with detailed vetting conducted by the WLU, pending flat offer from the LU) with false declarations detected by PHRM will be passed to the WLU for reassessment of their eligibility, and their status will be reverted to investigation stage.

4.14 Tables 29 and 30 in paragraph 4.9 also show the enforcement action taken by the RCSU and the WLU on cases with false declarations detected by PHRM:

(a) among the 67 newly registered applications detected by PHRM to contain false declarations over the past five years, the RCSU followed up 46 cases as at end of July 2013 (see Table 29). All of these 46 applications were

cancelled and referred to the Prosecutions Section for further enforcement action; and

(b) among the 9 applications in the process of flat allocation detected by PHRM to contain false declarations over the past five years (see Table 30), the WLU had followed up 8 cases up to the end of July 2013. In 1 case, the WLU did not find any false declarations. For the other 7 cases, the WLU cancelled the applications on 3 cases and referred 2 cases to the Prosecutions Section for further enforcement action.

4.15 Upon enquiry, Audit was informed that the practice adopted by the RCSU in handling false declaration cases, irrespective of whether the irregularities had affected the applicants' eligibility for applying PRH, was to cancel the application and refer the case to the Prosecutions Section. On the other hand, the WLU adopted a different practice. The WLU would cancel the application only if the irregularities found had affected the applicant's eligibility for PRH, otherwise it would be processed for flat allocation. Moreover, referrals to the Prosecutions Section would be made for cancelled cases only if the WLU considered that there was sufficient evidence that the false declaration was made intentionally.

4.16 In comparison, the RCSU has adopted a more stringent practice on new applicants than that adopted by the WLU on applicants due for flat allocation. The difference in practice might invite questions about the fairness in treating applicants with false declarations found in different stages of the application process. Audit considers that the HD needs to align the practices within the Applications Sub-section between the RCSU and the WLU in handling false declaration cases identified by PHRM.

Audit recommendations

4.17 **Audit has *recommended* that the Director of Housing should:**

(a) **consider requiring applicants to submit supporting documents for major types of declarable assets at the date of application for preliminary vetting;**

(b) **remind Applications Sub-section and PHRM to select additional cases to make good any shortfalls in the selected cases to meet the pre-determined sample size for in-depth checking of applicants;**

(c) **consider increasing the sample size for in-depth checking by PHRM on new applications in view of the high rates of detected false declarations; and**

(d) **align the practices within the Applications Sub-section between the RCSU and the WLU in handling false declaration cases identified by PHRM to ensure fairness in treatment.**

Response from the Administration

4.18 The Director of Housing agrees with the audit recommendations. He has said that:

(a) the HD puts more emphasis on the detailed vetting before allocation. Therefore, in the preliminary vetting stage, the HD requires supporting documents on major declarable assets only. However, applicants need to make declarations on all assets at the time of application. During the detailed investigation stage, supporting documents on all assets are required for vetting and if the HD finds discrepancy on the value of these assets as at the time of application, it will cancel the application on the basis of false information and consider prosecution; and

(b) the management will revise the sample size of random check cases to optimise the use of PHRM's staff resources amidst various challenging tasks.

Processing of household declarations under the Well-off Tenants Policies

Income and asset declarations

4.19 The HA's Well-off Tenants Policies comprise the HSP and the SRA. The HSP aims to reduce the housing subsidy to those tenants with income beyond the

laid-down limits. The SRA aims to review the wealthy tenants' continuing eligibility for PRH (see paras. 3.26 to 3.29 for details).

4.20 Under the HSP, tenants are required to declare the income of all household members every two years in an income declaration form. The types of income to be declared include:

(a) employment income (including income from overseas working members);

(b) self-employment and business income;

(c) average monthly interest/bonus/dividends from fixed deposits/savings insurance/investments;

(d) income from land and landed properties;

(e) monthly net income from commercial vehicles; and

(f) other income (such as monthly pension, Comprehensive Social Security Assistance payment, and financial support from relatives and friends).

4.21 Under the SRA, tenants are required to declare the assets of all household members every two years in an asset declaration form. The types of assets in Hong Kong, the Mainland or overseas to be declared include:

(a) land and landed properties (such as parking spaces and domestic/commercial/industrial properties);

(b) vehicles;

(c) taxi and public light bus licences;

(d) investments (such as listed shares, bonds, funds, investments/savings insurance and paper gold);

(e) bank deposits and cash in hand; and

(f) business undertakings.

Need to strengthen the monitoring mechanism

4.22 Each HSP 2-year cycle involves around 343,000 households (see also para. 3.30). On average, some 171,500 households are required to make declarations each year. The HD adopts an honour system whereby tenants are only required to state their household income in the income declaration forms without having to produce supporting evidence. The estate office, headed by a HM who is assisted by a number of AHMs and Housing Officers (HOs), is responsible for estate management matters. In respect of the biennial income declaration exercises, the HOs check the declaration forms and determine the rent payable levels. The AHMs/HMs review the declaration forms that have been checked by the HOs. Cases with doubts necessitating detailed checking would be referred to PHRM for in-depth investigation (see also para. 3.31).

4.23 As the majority of HSP cases (over 98%) are processed by the local estate offices, it is important for management to ensure consistency in practice and closely monitor the work performed by estate office staff for the proper and timely completion of the work. In May 2013, Audit asked the HD Headquarters about the work progress/completion timetable of all estates in respect of the submission of income declarations for the last HSP review cycle (i.e. April 2012 to March 2013). The HD said that such information was not readily available. During the visit to three selected housing estates (see para. 3.7), Audit also could not find such information at the estate offices.

4.24 Guidelines laid down for following up the submission of declaration forms from tenants were not strictly complied with. Upon enquiry, the HD informed Audit in September 2013 that HMs of the estates were required to develop a work plan and monitor the progress of their staff in each HSP review. They were requested to complete all the HSP cases within the designated timeframe and refer doubtful cases to PHRM. Computer reports on outstanding cases would be generated for follow-up by HMs of the estates and District Senior Housing Manager. However, Audit notes that no returns are required to be submitted by the estate offices to the Headquarters on the progress or completion of HSP review, and on the review results.

4.25 According to the HD Management Branch Instruction, the HMs are required to conduct a minimum of 5% random checks on those cases approved by the AHMs for quality control purpose. During visits to three estate offices, Audit noted in two estate offices that the 5% random checks were properly conducted with proper records prepared. However, in one estate office, records of random check were not available for inspection. Upon enquiry, the HM replied that only 6 cases (0.5% of the total) had been subject to random check, falling short of the 5% requirement.

Need to strengthen strategy to deter false declarations

4.26 PHRM is responsible for reviewing all SRA cases and investigating doubtful HSP cases referred by the estate offices, as well as the HSP cases randomly selected by computer for checking. Table 31 shows the number of such cases checked by PHRM in the past five years.

Table 31

SRA and HSP cases checked by PHRM
(2008-09 to 2012-13)

Year	No. of households subject to declaration	No. of cases checked by PHRM				No. of false declaration cases detected	
		All SRA cases	HSP cases referred by estate offices	HSP cases randomly selected	Total		
		(a)	(b)	(c)	(d) = (a) + (b) + (c)	(e)	(f) = $\frac{(e)}{(d)} \times 100\%$
2008-09	147,936	1,434	415	2,214	4,063	651	(16%)
2009-10	142,411	1,596	671	1,436	3,703	604	(16%)
2010-11	156,820	1,845	440	1,360	3,645	690	(19%)
2011-12	149,748	1,440	450	1,711	3,601	671	(19%)
2012-13	183,834	1,517	632	1,444	3,593	644	(18%)
Average	156,150	1,566	522	1,633	3,721	652	(18%)

Source: HD records

4.27 From 2008-09 to 2012-13, on average, about 156,000 households were required to submit their income/asset declarations to the HD each year. During the period, PHRM checked, on average, some 3,700 cases (or 2.4% of the households subject to declarations) a year, and some 650 cases (18% of the sample checked) were found to contain false declarations. For 2012-13, among the 644 cases with false declarations, 154 were SRA cases, 374 were HSP cases referred by estate offices and 116 were HSP cases randomly selected by PHRM. The false declaration rate appeared to be high. The HD needs to strengthen the strategy to deter false declarations.

Areas for improvement in in-depth checking and follow-up actions

4.28 PHRM conducts in-depth investigation of suspected false declaration cases. The process of such investigation includes the collection of supporting documents and interview with the suspected offenders to establish the offence. In conducting the in-depth checking of the HSP and SRA cases, PHRM normally obtains the following documents for checking:

(a) employment certificates with income details from the employers concerned (for HSP cases only);

(b) property records with the Land Registry;

(c) vehicle ownership details from the Transport Department;

(d) company records with the Companies Registry; and

(e) financial status search with major local banks.

4.29 Enforcement actions will be taken on false declaration cases. For first-time offenders without involving real or potential gain/benefit, PHRM will return the case files to estate offices for issuing warning letters. For false declaration cases involving real or potential gain/benefit, or a relapse of the offence, PHRM will collect further evidence for submission to the Prosecutions Section for consideration of prosecution action.

4.30 Audit randomly selected 58 cases (32 HSP and 26 SRA cases) for reviewing the PHRM checking, involving 49 cases with false declarations. Audit found that there were inadequacies in checking by PHRM as follows:

(a) in 46 cases, no financial status search with major local banks was performed;

(b) in 44 cases, no company search with Companies Registry was performed;

(c) in 31 cases, no checking against the Transport Department records for vehicle ownership was performed; and

(d) in 4 cases, even though income could not be verified, no further evidence from other sources was obtained (e.g. requesting tax returns or Mandatory Provident Fund contribution statements from tenants).

4.31 PHRM has issued guidelines for the steps and procedures to be performed in checking individual cases. Upon enquiry, the HD informed Audit in September 2013 that:

(a) the search of financial records, company records and the Transport Department records would only be conducted if and when the circumstances warranted; and

(b) the checking officers had the discretion to decide on the necessary documents to be obtained for conducting the checking.

4.32 Audit considers that PHRM should lay down more detailed investigation guidelines for the steps and procedures to be performed and the evidence or supporting documents to be gathered in conducting in-depth checking.

4.33 In the selected cases, Audit also noted inadequacies in taking follow-up actions as follows:

(a) in 36 cases, no warning letters were issued by estate offices to the offenders because no real or potential gain of benefit was involved;

(b) in 6 cases involving repeated offences, submission of the cases to the Prosecutions Section was not done; and

(c) in 2 cases, the rent undercharged was not recovered from the tenants.

4.34 Audit found that appropriate actions were not taken on the above cases due to omissions. There is a need for the HD to strengthen supervisory controls over follow-up actions on false declaration cases.

Audit recommendations

4.35 **Audit has *recommended* that the Director of Housing should**:

(a) **strengthen the mechanism by issuing more detailed guidelines on conducting and monitoring of HSP reviews conducted by estate offices;**

(b) **keep under review the rates of detected false declarations under the HSP and the SRA, and strengthen strategy to deter false declarations;**

(c) **issue more detailed guidelines to PHRM staff and closely monitor the investigation for conducting in-depth checking; and**

(d) **strengthen supervisory controls over follow-up actions on false declaration cases.**

Response from the Administration

4.36 The Director of Housing agrees with the audit recommendations. He has said that:

(a) HD staff have been reminded to comply with the detailed guidelines to follow up the submission of declaration forms from tenants in each HSP exercise. The management would further strengthen the overall monitoring of the implementation of HSP;

(b) the HD has strengthened the efforts in deterring false declarations by:

(i) deploying 30 additional experienced staff to increase the number of checks for one year;

(ii) increasing the publicity budget from $2 million in 2012-13 to $4 million in 2013-14; and

(iii) publicising convicted false declaration cases to draw public attention;

(c) the HD will fine-tune the current in-house guidelines for conducting in-depth checking and remind staff for compliance. Supervisors of PHRM will closely monitor the investigation and offer advice to HOs in doubtful cases; and

(d) frontline staff will be reminded to observe the existing guidelines on handling false declarations. The computer system for tenancy management has been enhanced to closely monitor the progress of false declaration cases once discovered.

Flat inspections under the Biennial Inspection System

4.37 The HD is committed to safeguarding proper utilisation of subsidised PRH resources. Therefore, estate staff should endeavour their best efforts to detect any tenancy abuse cases for subsequent flat recovery upon tenancy enforcement actions taken. To address the potential abuse problem, the HD relies much on the flat inspections conducted by estate staff and considers the flat visit to be the most direct and effective means of detecting tenancy abuses such as non-occupation, occupation by unauthorised persons and subletting.

4.38 Pursuant to section 22 of the Housing Ordinance, estate staff are authorised to enter and inspect any flat in the estate. Before November 2008, tenants were required to declare their family particulars and occupancy position (OP) on a biennial basis under an honour system. On return of completed forms, estate officers would carry out flat visits to verify the information on the forms. Estate staff were required to fill in a form recording the result of each inspection

checking, among others, personal particulars of tenants, their relationship, marital status, the persons met, unauthorised persons seen, disabled persons, car ownership, the flat conditions with its defects and actions required, unauthorised installations and high-loading electrical appliances inside the flat.

4.39 With effect from 1 November 2008, the HD has implemented the Biennial Inspection System to replace the previous declaration system. Under the arrangement, all PRH tenants are no longer required to complete the declaration forms. The estate staff would make use of a Personal Digital Assistant (PDA) incorporated with a tailor-made Mobile Application System for Housing Management (MASHM) to conduct the flat inspection. Within a 24-month cycle, all flat inspections in the respective estates have to be completed. The estate staff also need to ascertain the OP when a tenancy has changes in household members, (e.g. addition or deletion of household members).

4.40 The HD has issued guidelines and procedures for estate staff to conduct flat inspections. To prepare for the inspections, estate staff should download the necessary tenancy information from the MASHM to the PDA in the office. During the flat visit, the estate staff should check the OP of the household concerned against HD record and input the findings into the PDA. The details recorded should include names of the persons met (their identities should be checked against their identification documents) in the flat. This inspection record is to facilitate follow-up action and HM's endorsement.

4.41 After the preliminary investigation, management staff may refer suspected cases of tenancy abuse with prima facie evidence to PHRM for conducting in-depth investigations. They may include night and morning checks and special visits to the suspected alternative accommodation of the defaulting tenants in the private sector so as to establish misuse/abuse of public flats. The visit report by PHRM should indicate clearly the date, time and persons seen, a sketch of the layout of the flat, and other relevant information. Findings by PHRM would be reported to the HMs concerned for considering termination of tenancy or other follow-up actions.

Inconsistent practices for flat inspection

4.42 During the audit visits to three estates (see para. 3.7), Audit staff accompanied the estate staff in conducting biennial inspection visits. Audit noted

that although there were general guidelines on conducting the biennial inspection, the practices of different estate officers varied. There were no standard checklists. The estate staff assessed the general situation of each inspection and determined whether follow-up work was required.

4.43 In one estate, the estate staff entered the flats, enquired the persons seen, checked their identification documents, inspected the layout of the flats and occasionally gave advice on home safety. In the other two estates, the estate staff mostly stood outside the PRH flats, enquired the persons seen and sought information of other family members. They did not enter the flats and did not always ask for identification documents for verification of tenant status.

4.44 It was also noted that some estate staff input into the PDA for unsuccessful visits (i.e. no one answered the door) but others did not do so. The number of unsuccessful visits could be an important indication of flat non-occupation. For example, in one case, the HD staff could only contact the tenant after more than 20 unsuccessful visits and it was found out to be a non-occupation case for termination of tenancy. Audit noted some other cases in other estates, after several unsuccessful visits, the estate staff recorded "others" in the inspection report (see para. 4.46) and took no further action. Audit considers that there should be standard procedures and checklists for conducting the inspection and specific guidelines for follow-up action on doubtful cases (e.g. repeated unsuccessful visits).

Supervisory checking on inspections

4.45 The MASHM is a computer system that helps the HM ensure that all tenancies are inspected within the 24-month cycle. The MASHM reports showed the result codes (e.g. "occupancy position in order, no action required", "case referred to PHRM" or "others").

4.46 Audit noted that inspection results with the inspection code "others" were mostly cases in which no one was seen in the flats. However, no further action was taken for most of these cases. On the other hand, there were cases with inspection code "in order" but in fact no person was seen in the flats. Audit could not find any specific guidelines or procedures for the staff to record the inspection results or follow up cases with special codes on the MASHM reports. Although all the flats

appeared to have been visited under biennial inspection, the objective to identify tenancy abuse might not have been fully achieved.

Inspections with only one household member found

4.47 Audit selected some 30 households (each with more than one household member) from each of the three estates visited and checked their biennial inspection records for the last cycle from November 2010 to October 2012. Audit found that the percentages of cases where only one member was seen during the inspection were high (ranging from 68% to 91%). In view of this, Audit considers that the HA should assess the risk of tenancy abuses in such cases, and consider taking additional measures. In this connection, Audit noted that a deceased member of a family could remain unnoticed for many years (see Case 10).

Case 10

Deceased member of a family remained unnoticed

1. A tenancy was owned by a father who lived with his son. In 1995, the son applied to be the principal tenant and claimed that his father was hospitalised in the Mainland.

2. An OP declaration was made by the son in 2000. He claimed that his father regularly resided in the PRH flat. There had not been any OP declarations/inspection records in the case file since then.

3. The first biennial inspection under the MASHM was conducted on 2 February 2010 and the father was not seen during the inspection.

4. In 2011, the father was invited to attend a birthday meetings of centenarians. In 2012, the son revealed the fact that his father had already passed away in the Mainland in 1996.

5. In 2012, the HD enquired with the Immigration Department for the death of the father but no death record was available because he died in the Mainland. The deceased person was deleted from the tenancy. The HD considered that timely action had been taken to delete the deceased person from the tenancy once the case was discovered.

Source: HD records

Need to monitor follow-up inspections closely

4.48 For some inspections where irregularities on OP were noted, there should be follow-up flat inspections and corresponding actions to clarify or rectify the situation. For example, for cases where the elderly persons were admitted to the residential care homes, estate staff should follow up in accordance with the HD's instructions. That is, the elderly person is allowed to opt for deletion or surrender of flat within six months upon confirmation of being admitted into the residential care homes. Retention of name will be permitted only for good reasons. The normal termination of tenancy procedures would follow if the elderly tenant fails to make an option or effect the deletion after the six-month period.

4.49 Audit selected a few cases with admission of elderly household members into elderly care homes for over six months, and found that follow-up inspections were not always conducted by estate staff to confirm the OP. Audit considers that estate staff should conduct follow-up inspections in accordance with the laid-down procedures, and take necessary tenancy actions accordingly.

4.50 Other cases requiring follow-up inspections include successful appeal against notice-to-quit. Audit examined two such cases where the tenants were granted conditional residence on condition that they had to reside regularly in the flats. For one case, five flat inspections were conducted by DTMO staff but the tenant was seen only at the last visit. For the other case, no flat inspection was conducted by DTMO staff. Audit considers that DTMO staff should conduct special inspections according to laid-down procedures.

Audit recommendations

4.51 **Audit has *recommended* that the Director of Housing should**:

(a) **adopt a standard checklist with detailed instructions for conducting flat inspections to ensure consistency in checking practices among estates and among estate staff;**

(b) **instruct estate staff to input correctly the details and code of inspection results for supervisory checking;**

(c) **keep in view the percentage of cases where only one household member was seen during flat inspections and consider the need for additional measures for following up such cases; and**

(d) **remind estate staff to follow laid-down procedures to conduct follow-up flat inspections for warranted cases (e.g. admission of elderly household members to residential care homes, and cases involving conditional residence).**

Response from the Administration

4.52 The Director of Housing agrees with the audit recommendations. He has said that:

(a) the HD would enhance the existing guidelines and remind frontline staff to observe them when conducting flat inspections and follow-up inspections, particularly in recording unsuccessful visits (see para. 4.44), and in referring suspected tenancy abuse cases to PHRM for in-depth investigations;

(b) HD staff are trained to detect occupancy irregularities by observations of bedding facilities and the like during flat inspections. Depending on the site situation at the material time, such as tenants' sentiment or their engagement in some activities (e.g. cooking and playing mahjong), the HD staff will exercise discretion of not to enter the flat and arrange a re-visit later; and

(c) regarding paragraph 4.50, the management staff has conducted inspections during the period under observation. In addition to flat inspections, water and electricity readings were also taken to verify the OP of the flats.

Enforcement actions

Handling of suspected false statement cases

4.53 Applicants for PRH and existing PRH tenants are required to declare their household income and/or assets and family particulars in order to assess their eligibility or continuing eligibility under various housing management policies. Should they knowingly make any false statements, they commit an offence under section 26(1) of the Housing Ordinance and are liable to a fine up to $50,000 and six months' imprisonment upon conviction.

4.54 The HD has issued a circular and instructions to promulgate workflow and guidelines on handling suspected false statements. To establish false statement cases, the two main elements to be proved are "falsity of the information" and "knowingly". A case for prosecution has to be proved beyond reasonable doubt that the defendant did make a statement that he knew to be false at the material time. In order to take prosecution action regarding a false statement case, it is important to gather sufficient evidence.

4.55 PHRM acts as a central team to conduct in-depth investigations including the taking of cautioned statements on false statement cases. The Prosecutions Section of the Legal Service Sub-division is delegated the authority by the Department of Justice for taking prosecution action for various offences under the Housing Ordinance and other Ordinances.

4.56 Table 32 shows an analysis of false declaration cases referred to the Prosecutions Section for action in 2012.

Table 32

False declaration cases referred to Prosecutions Section in 2012 (19 July 2013)

Action for case received	Number of cases
No prosecution	470
Pending investigation	23
Prosecution taken	
Convicted cases	84
Acquitted cases	2
Outcome pending	5
	91
Total	584

Source: HD records

Time bar for prosecution action

4.57 Most of the offences under the Housing Ordinance are summary offences and there is a time bar for their prosecution. Under section 29A of the Ordinance, different statutory time-bar periods apply for the prosecutions of various offences. Both the date of discovery of the offence and the date of commission of the offence are relevant for the determination of time bar. No prosecution can be taken if the time bar has passed. To ensure timely prosecution action, the relevant files and documents should be passed to the Prosecutions Section at least two months before the expiry of the time bar.

4.58 Based on the statistics kept by the Prosecutions Section, it was revealed that, for 28 (2%) and 12 (2%) cases in 2011 and 2012 respectively, the relevant files and documents were submitted to the Prosecutions Section after the time bar. For another 61 (5%) and 57 (10%) cases in 2011 and 2012 respectively, the relevant files and documents were passed to the Prosecutions Section less than two months from the expiry of the time bar. The late submission of relevant files and documents to the Prosecutions Section will hinder the latter to take timely prosecution actions within the time bar.

Sufficiency of evidence for prosecution

4.59 When considering whether to institute a prosecution action, it is important that there is sufficient evidence to support the charge. The evidence must be admissible, substantial and reliable to establish the offence committed by an identifiable person. Such evidence includes documents of the subject matter of offence (e.g. declaration forms), other supporting documents pointing to the falsity (e.g. employment certificate and bank statements), interview records/statements obtained in the course of investigations, and the relevant witness statements. The officer interviewing the offender may be required to serve as a prosecution witness to give evidence in court.

4.60 The HD adopts an honour system in processing declarations from PRH applications and tenant's declarations, and only requests applicants/tenants to supply minimal supporting documents. Without full supporting documents, Audit considers that it is often difficult for the HD staff to detect any false statements at an early stage. It may require more time for the staff to carry out investigation work for collecting evidence. Audit scrutiny of cases which had been processed by the Prosecutions Section showed that such cases were not laid before court mainly because of insufficient evidence.

4.61 Apart from the "falsity" element, the existence of the "knowingly" element is also decisive for successful prosecution. The prosecution has to prove beyond reasonable doubt that the defendant did make a statement that he knew to be false at the material time. Records of the Prosecutions Section showed that very often it might be difficult to prove the "knowingly" element, thus resulting in the decision of no prosecution.

4.62 With a view to establishing the "knowingly" elements, the EMD of the HD has recently required its staff to use a "Checklist" during interview for initial clarification of doubtful points. The Prosecutions Section also advised HD staff using the Checklist to record the interview when conducting investigation. The Checklist is to record the details of interview and to ensure that the interviewee fully understands what particulars he/she is required to furnish and what particulars have been declared about himself/herself on the declaration forms. However, the Checklist was seldom used. Audit noted that so far the Checklist was adopted in only two cases and the Prosecutions Section had successfully prosecuted and convicted offenders of these two cases.

Prosecution of WL applicants making false declarations

4.63 WL applicants found by the Applications Sub-section to have knowingly given false information would normally have their applications cancelled and would be referred to the Prosecutions Section for prosecution action (see para. 4.15). Table 33 shows an analysis of false declaration cases referred by the Sub-section to the Prosecutions Section for action in the past five years.

Table 33

False declaration cases related to WL applicants
(31 July 2013)

Year	Cases referred to Prosecutions Section	Cases prosecuted	Cases not prosecuted due to		Prosecution rate
			insufficient evidence	expiry of time bar (Note 1)	
	(a)	(b)	(c)	(d)	(e) = (b)/(a) × 100%
	(No.)	(No.)	(No.)	(No.)	(%)
2008-09	218	105	113	—	48%
2009-10	378	117	261	—	31%
2010-11	316	68	244	4	22%
2011-12	344 (Note 2)	46	298	—	13%
2012-13	229 (Note 3)	32	195	2	14%
Overall	1,485	368	1,111	6	25%
				1,117	

Source: *Audit analysis of HD records*

Note 1: *After the statutory time-bar date, the Prosecutions Section can no longer prosecute the offender irrespective of whether there is strong and sufficient evidence.*

Note 2: *As at 31 July 2013, 4 cases were pending feedback from the Prosecutions Section and thus excluded.*

Note 3: *As at 31 July 2013, 127 cases were pending feedback from the Prosecutions Section and thus excluded.*

4.64 Table 33 shows that:

(a) the prosecution rate had decreased over the past five years, from 48% in 2008-09 to 14% in 2012-13; and

(b) for the 1,117 cases with no prosecution action, 1,111 (99%) cases were due to insufficient evidence and 6 (1%) cases were due to lapse of the time bar before submission of the suspected cases to the Prosecutions Section.

4.65 On the other hand, Audit noted that the conviction rates of those prosecuted cases were very high (over 90% as calculated from Table 32 in para. 4.56) but the prosecution rate was low (14% in 2012-13 as shown in Table 33). Upon Audit's enquiry in September 2013, the Prosecutions Section analysed the reasons for the low prosecution rate for applicants making false declarations, and concluded that the main reason was insufficient evidence to prove the knowingly element of the offences. To further improve the enforcement work, the Prosecutions Section suggested the following:

(a) to avoid misunderstanding to the requirements of the declaration forms, the completion guidelines should clearly and explicitly state the requirements. This was particularly important in cases where the information required is the net asset value and related income of insurance, securities and business, etc. at the material time. It was believed that both the falsity contained in the information so provided and the presence of the knowingly element could be more easily or readily detected and proved if the requisitions made could be improved as such;

(b) the presence of an interviewing officer and the use of checklist to record the interviewing process even at the registration stage pointing to the knowingly element of the suspected offence were essential to secure a conviction; and

(c) to strengthen the prosecution's case in similar cases, a responsible officer should go through the items on the application form with each of the signing parties, and the responsible officer should sign on the application form to acknowledge that he/she had done so.

4.66 Audit examined five cases with no prosecution action taken (Note 17) to identify areas for improvement. Audit noted that:

3 cases due to insufficient evidence

(a) in two cases, the details/causes for insufficient evidence were not provided to the initiating offices in the files. Further examination revealed that the cause for insufficient evidence might be attributable to the fact that the two suspected offenders refused to give any cautioned statement at their respective meeting with the HD in August 2012;

(b) in one case, an applicant for PRH WL registration was suspected to have made false statements on an HD form by concealing his daughter's job and related income in November 2008 when applying for deletion of a household member. However, unlike the PRH WL application form, the HD form used for applying for deletion of household members did not contain a clause indicating that it was a declaration requiring the provision of true and correct information, which was subject to legal liabilities of knowingly making false statements. Besides, no investigation interview was conducted in connection with the completion of the HD form. In the event, the HD concluded that prosecution action could not be taken because there was no legal basis to do so. This case has highlighted the need to take measures to ensure that the relevant information provided in the declaration forms can be used, if necessary, as evidence for prosecution; and

2 cases due to expiry of time bar

(c) in the two cases, the alleged offences were committed at the time of making declarations on application forms on 25 April 2005 and 2 October 2005 respectively. The alleged offences were discovered on 5 July 2011 and 24 October 2011 respectively which were about two and half months and three weeks later than the time-bar date which lapsed on 24 April 2011 and 1 October 2011 respectively.

Note 17: *Any decision of the Prosecutions Section not to prosecute (e.g. because of the lack of sufficient evidence) needs the endorsement of the Assistant Director (Legal Service).*

4.67 In this connection, Audit noted that from April 2008 to August 2013, legal training had been provided to a total of 135 staff of the Applications Sub-section. Audit considers that there is a need to enhance legal training on areas such as the kind of evidence that should be taken and how interviews with applicants should be conducted in order to equip the staff of the Applications Sub-section with the general knowledge of gathering sufficient evidence for handling false declaration cases.

Audit recommendations

4.68 **Audit has *recommended* that the Director of Housing should:**

(a) **take measures to ensure that HD staff are aware of and observe the requirements to submit relevant files and documents to the Prosecutions Section for taking prosecution action at least two months before the time bar;**

(b) **require HD staff to use the Checklist to record the interview with applicants/tenants when conducting investigation;**

(c) **continue to analyse periodically the reasons for the low prosecution rates for false declaration cases;**

(d) **take measures to ensure that the relevant information provided in the declaration forms can be used, if necessary, as evidence for prosecution, including for example, reviewing all forms relating to PRH application so that all declaration forms include a clause indicating that the declarations made therein are subject to legal liabilities of knowingly making false statements, and if necessary, conducting investigation interviews in connection with the completion of the HD forms; and**

(e) **further enhance legal training (including experience sharing seminars) for staff of the Applications Sub-section and housing estates in order to equip them with better knowledge on gathering sufficient evidence for handling false declaration cases.**

Response from the Administration

4.69 The Director of Housing agrees with the audit recommendations. He has said that:

(a) the HD will remind staff to observe the timeframe for prosecution action, and to use the Checklist during initial investigation for establishment of the knowingly element and recording interviews/statements;

(b) PHRM staff will caution each interviewee before starting the investigation interview and require the interviewee to declare his income/assets instantly on requisite forms. They will record details of rigorous checking on income/assets declarations in the investigation report;

(c) the HD will review the declaration forms which can serve as evidence for prosecution; and

(d) the HD supports enhanced legal training for staff and will send more staff to attend the training subject to resources consideration.

PART 5: WAY FORWARD

5.1 This PART explores the way forward for the allocation and utilisation of PRH flats.

Areas for improvement

5.2 In Hong Kong, public housing resources are valuable and heavily subsidised. As at end of March 2013, the HA had a stock of about 728,000 PRH flats, accommodating some 2 million people. PRH is the primary housing solution for the grassroots and there has been an increasing demand for PRH flats in recent years. It is necessary to ensure that PRH flats are allocated in a fair and rational manner so that the limited public resources are used to assist those with genuine housing needs.

5.3 In this review, Audit has examined the HA's efforts in prioritising the allocation of PRH flats in order to help those with the most pressing housing needs, and in maximising and rationalising the use of existing PRH flats. Audit has identified a number of areas that call for improvement. Key areas for improvement include:

Part 2: Allocation of flats to people in need of PRH

Management of the WL for general applicants

(a) enhancing the transparency and accountability of the HD's management of the WL for PRH, for example, by publicising the definition of AWT and the basis of its calculation;

(b) conducting investigations periodically to identify long-outstanding cases in which general applicants have waited on the WL for over 3 years;

(to be continued)

(Cont'd)

Implementation of the QPS

(c) need to conduct a comprehensive review of the QPS;

(d) considering the need to screen out ineligible QPS applicants from the WL on a periodic basis;

Processing of applications

(e) taking measures to streamline the HD's processing of PRH applications;

(f) investigating into the reasons for the unduly long time taken by PHRM for the random checking of income and assets, and taking measures to expedite PHRM's efforts to conduct the checking;

Part 3: Maximising the rational utilisation of PRH flats

Management and control of unoccupied flats

(g) stepping up the monitoring of both the "under offer" flats and the unlettable flats;

(h) expediting the phasing out of the HSC and C1P flats and their conversion into normal PRH flats for allocation;

Implementation of the Well-off Tenants Policies

(i) taking measures to ensure that all exemption indicators in the DTMS are correctly recorded;

(j) need to critically review the Well-off Tenants Policies to see whether the various parameters of the HSP and the SRA can be fine-tuned for further improvements;

Under-occupation of PRH flats

(k) stepping up the HD's efforts in tackling the UO issue, paying particular attention to long-outstanding UO households and those UO households each occupying two or more flats;

(l) expediting the HD's efforts in dealing with the MS cases;

(to be continued)

(Cont'd)

Part 4: Tackling abuse of PRH

Checking of eligibility of applicants

(m) requiring applicants to submit supporting documents for major types of declarable assets at the date of application for preliminary vetting;

(n) increasing the sample size for in-depth checking by PHRM on new applications;

Processing of household declarations under the Well-off Tenants Policies

(o) strengthening the mechanism with detailed guidelines on conducting and monitoring of HSP reviews conducted by estate offices;

(p) keeping under review the rates of detected false declarations under the HSP and the SRA, and strengthening strategy to deter false declarations;

Flat inspections under the Biennial Inspection System

(q) adopting a standard checklist with detailed instructions for conducting flat inspections;

(r) reminding estate staff to follow laid-down procedures to conduct follow-up flat inspections for warranted cases;

Enforcement actions

(s) need to continue to analyse periodically the reasons for the low prosecution rates for false declaration cases; and

(t) further enhancing legal training (including experience sharing seminars) for staff of the Applications Sub-section and housing estates.

Review of the Long Term Housing Strategy

5.4 The LTHS Steering Committee (see para. 1.10) examined a number of key issues at its meetings held during the period November 2012 to August 2013, including:

(a) an assessment of the WL for PRH;

(b) an assessment of the changing housing needs of different groups in the community and measures to address and prioritise such needs;

(c) a review of both public and private housing demand; and

(d) measures to optimise the use of public housing resources.

5.5 The Steering Committee completed its comprehensive assessment of housing demand and review of the housing policies in order to address the changing housing needs of the community. In September 2013, the Committee produced a consultation document on the LTHS for three months' public consultation. The public consultation would end in December 2013, and the Committee would submit a report on the public consultation thereafter. The Government would then take into account views expressed in the consultation document as well as those received from the public in formulating the LTHS and relevant policy measures.

5.6 As stated in the consultation document, in terms of the housing strategy, the premise is to continuously increase housing supply, stabilise the property market, attach importance to the functions of public housing and promote social mobility. To this end, a number of recommendations are proposed. According to the Steering Committee, the Government has not reached any conclusions on the recommendations set out in the consultation document. The Steering Committee's key recommendations relating to PRH are summarised as follows.

The Steering Committee has *recommended* that the HA should:

WL for PRH

(a) strive to maintain the AWT target, despite the possibility of occasional departure from the target;

(to be continued)

(Cont'd)

QPS

(b) develop a mechanism to review the income and assets of QPS applicants and to conduct regular reviews accordingly, in order to remove applicants who are no longer eligible from the WL;

Well-off Tenants Policies

(c) consider further reviewing and updating the Well-off Tenants Policies;

Under-occupation policy in PRH estates

(d) consider offering say, a three-month rent waiver to UO households as a further incentive for them to move to smaller flats in addition to the existing Domestic Removal Allowance;

(e) formulate a programme for handling the UO cases; and

Measures to tackle abuse of PRH

(f) allocate additional resources in order to implement further measures to detect and tackle tenancy abuse cases.

5.7 The HA is playing a key role in the housing sector in Hong Kong. The provision of PRH is the primary role of the HA. This audit review has highlighted various issues of concern relating to the allocation and utilisation of PRH flats, and suggests measures for improvement. In this connection, the Transport and Housing Bureau needs to take into account the results of the public consultation as well as the audit observations and recommendations in this Audit Report when examining the way forward for the LTHS Review.

Audit recommendation

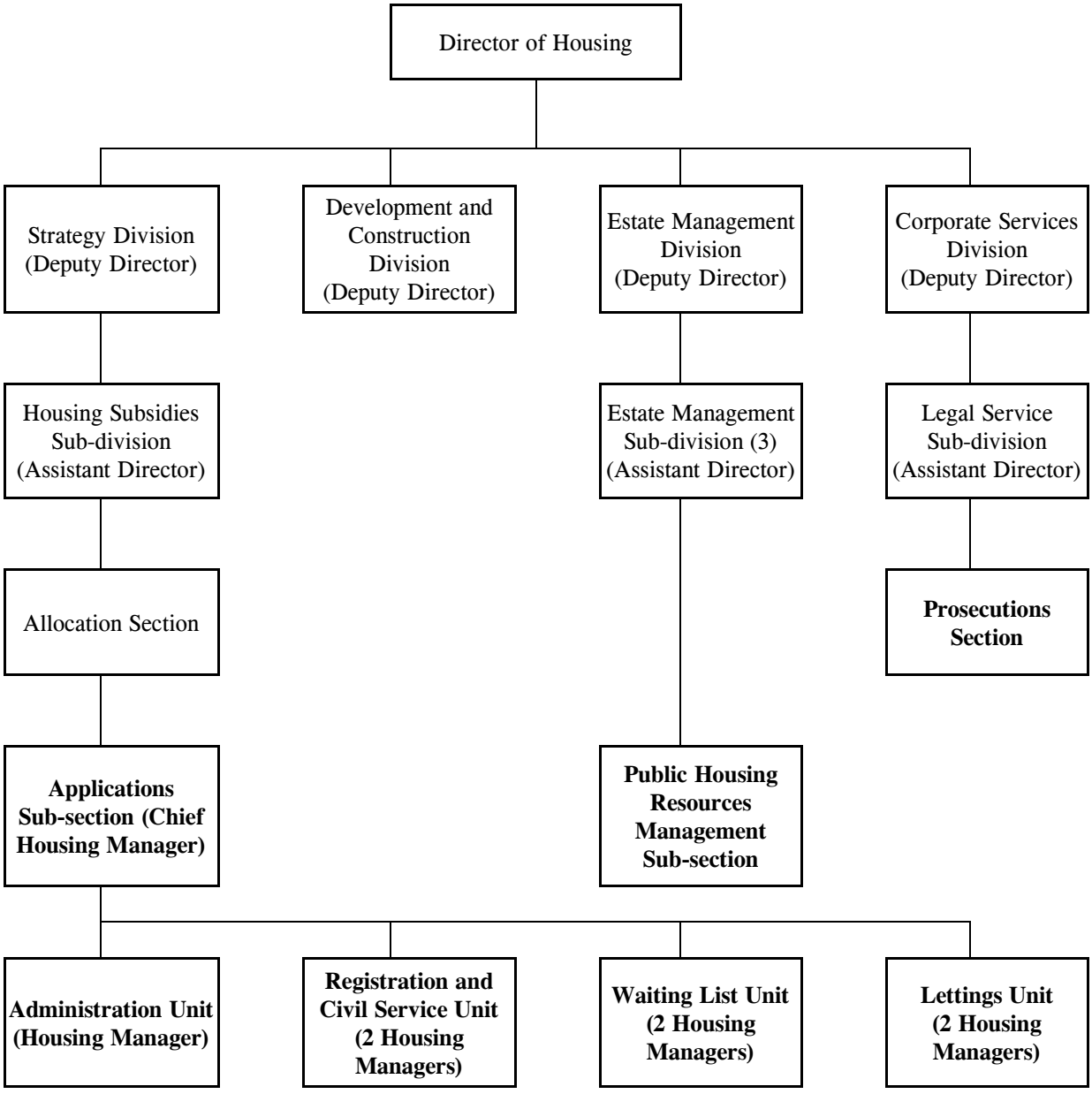
5.8 **Audit has *recommended* that the Secretary for Transport and Housing should take on board the audit observations and recommendations in this Audit Report in taking forward the LTHS Review.**

Response from the Administration

5.9 The Secretary for Transport and Housing agrees that Audit's observations and recommendations should be taken on board in taking forward the LTHS review. The LTHS Steering Committee's recommendations and all of the views collected during the consultation period will be referred to the HA for consideration and implementation.

Appendix A
(paras. 1.4, 2.52 and 2.73 refer)

Housing Department
Organisation chart (extract)
(September 2013)



Source: HD records

Appendix B
(paras. 2.7 and 2.53 refer)

Eligibility criteria for the allocation of PRH flats

The key eligibility criteria for general applicants are as follows:

(a) the applicant must be 18 years of age or over. The applicant and family members must be residing in Hong Kong and have the right to land in Hong Kong without subject to any conditions of stay. Family members who are not living and have not landed in Hong Kong cannot be included in the applications;

(b) the relationship between the applicant and family members must be either husband and wife, parents, children, grandparents, grandchildren, unmarried brothers and sisters or other dependent relatives who are willing to live with the applicant;

(c) the applicant and family members must not own or co-own any domestic property in Hong Kong (Note);

(d) the total monthly income and net asset value of the applicant and family members must not exceed the income and total net asset value limits laid down by the HA;

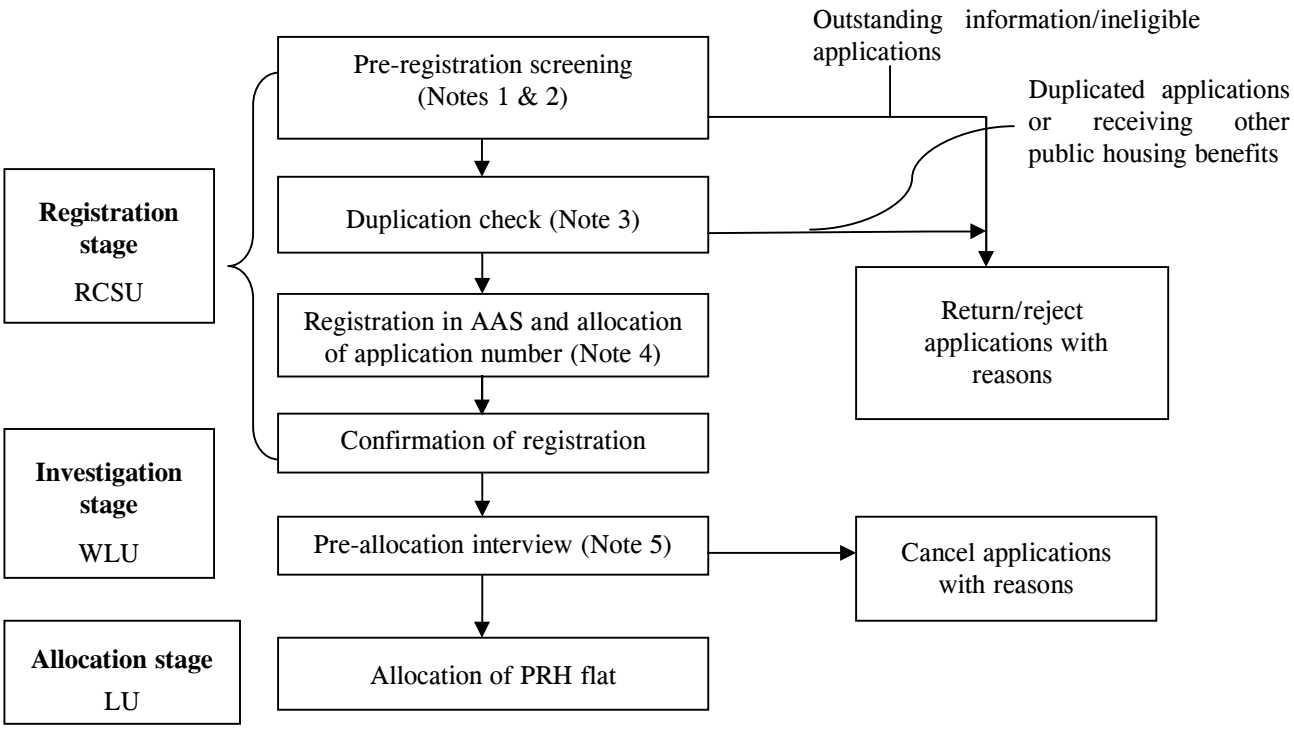
(e) the applicant must not be an ex-owner/ex-joint owner or former recipients of various subsidised home ownership schemes (such as the HOS and the Home Purchase Loan Scheme); and

(f) at the time of flat allocation, at least half of the family members included in the application must have lived in Hong Kong for seven years and all family members must be still living in Hong Kong. Children under the age of 18, regardless of the place of birth, are deemed as having satisfied the seven-year residence rule, provided that one of their parents has lived in Hong Kong for seven years. They are also deemed as having fulfilled the seven-year residence requirement if they have established Hong Kong birth status as permanent residents.

Note: *Domestic property includes uncompleted private domestic property, roof-top structure approved by the Building Authority, domestic building lots and Small House Grants approved by the Lands Department in Hong Kong.*

Appendix C
(paras. 2.26, 2.54 and 2.73 refer)

Procedures for processing PRH applications



Source: *HD records*

Note 1: ***Pre-registration screening.*** *The vetting officer checks submitted supporting documents (employment certificate, copy of Hong Kong Identity Card, documentary proofs of relationship etc.) against application. Applications with insufficient information or not fulfilling the eligibility requirements are returned to applicants/rejected with reasons.*

Note 2: ***Basic eligibility requirements:***

(a) resided in Hong Kong for seven years;

(b) fulfilment of the income/asset limits; and

(c) does not own any domestic property in Hong Kong immediately before submission of application and during the application period.

Note 3: ***Duplication check.*** *The vetting officer keys in the Hong Kong Identity Card numbers of applicants and household members to the Application and Allocation System (AAS) to check any duplicated application or receiving other public housing benefits.*

Note 4: ***AAS.*** *The system was launched in 2008 to facilitate the management of the WL and keep track of the applications.*

Note 5: ***Pre-allocation Interview.*** *The WLU selects applications due for allocation for pre-allocation interviews.*

Appendix D
(paras. 2.33 and 2.38 refer)

Key features of the Quota and Points System

Points System

1. Points are assigned to applicants based on three determining factors, namely, age of the applicants at the time of submitting their PRH applications, whether the applicants are PRH tenants, and the waiting time of the applicants. Details are:

(a) zero point will be given to applicants aged 18. Three points will be given to those aged 19; six points to those aged 20 and so forth;

(b) for applicants living in PRH (including those living in rental housing operated by the Housing Society), 30 points will be deducted; and

(c) one additional point will be received when the concerned applicant has waited on the WL for one more month.

2. The relative priority of the applicants on the WL will be determined according to the points he/she has received. The higher the number of points accumulated, the earlier will the applicant be offered a flat.

Annual Allocation Quota

3. Over the 10-year period from 1995/96 to 2004/05, the average percentage of flats allocated to non-elderly one-person applicants on the WL is about 8% of the total number of flats allocated to WL applicants. SHC decided to set the annual allocation quota for non-elderly one-person WL applicants at 8% of the number of flats to be allocated to WL applicants subject to a ceiling of 2 000 units.

Source: *HD records*

Remarks: *QPS applicants switching to family applicants comprising two or more persons can carry half of their waiting time accumulated, subject to a maximum of 1.5 years.*

Appendix E
(para. 2.56 refers)

Declaration forms for PRH applications

1. Person whose spouse has not been given the right to land in Hong Kong
2. Applicant who is proceeding with divorce
3. Family member who is proceeding with divorce
4. Grandparent who has guardianship of grandchild(ren) under 18 years old
5. Person who has no fixed employer
6. Person who is self-employed without holding a Business Registration Certificate
7. Person who holds a Business Registration Certificate
8. Person who owns a business vehicle
9. Person who owns a fish boat for living
10. Person who rents a taxi/public light bus
11. Person who is employed to work in a fish boat
12. Divorced person who receives/pays maintenance fee
13. Person who is unemployed
14. Person who has investment items
15. Person who has invested on insurance policy
16. Person who has fixed deposit
17. Person who is bankrupt with property ownership

Source: *HD records*

Remarks: *The declaration forms are to be used by individual applicants where applicable.*

Appendix F
(para. 3.27 refers)

Subsidy income limits for PRH tenants (effective from 1 April 2013)

Household size (No. of persons)	Subsidy Income Limits (per month)	
	Households with income between the following ranges are required to pay 1.5 times net rent plus rates ($)	Households with income exceeding the following limits are required to pay double net rent plus rates ($)
1	17,761 — 26,640	26,640
2	27,501 — 41,250	41,250
3	36,621 — 54,930	54,930
4	44,281 — 66,420	66,420
5	50,721 — 76,080	76,080
6	56,801 — 85,200	85,200
7	63,261 — 94,890	94,890
8	67,621 — 101,430	101,430
9	75,701 — 113,550	113,550
10 or more	79,481 — 119,220	119,220

Source: HD records

Appendix G
(para. 3.29 refers)

Net asset limits for PRH tenants (effective from 1 April 2013)

Household size (No. of persons)	Net Asset Limit (84 times 2013-14 WLIL) ($)
1	750,000 (Note)
2	1,160,000 (Note)
3	1,540,000 (Note)
4	1,860,000
5	2,140,000
6	2,390,000
7	2,660,000
8	2,850,000
9	3,180,000
10 or more	3,340,000

Source: HD records

Note: The net asset limits for small households at sizes of one-person to three-person with all members aged over 55 are the same as that of a four-person household, i.e. $1,860,000.

Appendix H
(para. 3.34 refers)

Case 5

Exemption indicator not updated in Estate A

1. In March 1982, the HD granted the tenancy to the subject household with four family members. In April 1986, the HD further approved an addition of the tenant's mother (74 years old) into the tenancy. In April 1992, the household had been living in PRH for 10 years and was required to declare household income biennially under the HSP.

2. In June 2013, Audit visited the estate office and reviewed the subject tenancy file. Audit noted that there were three members with ages ranging from 34 to 63 still living in the PRH flat, and thus the household should be subject to the biennial income declaration. However, no such income declaration forms could be found in the file. Upon Audit enquiry, the estate staff explained that an exemption reason "EPS — Elderly Priority Scheme" was captured by the computer and thus the household had not been included in the HSP review exercise.

3. As there was no procedure for the HD to cross-check the exemption reasons against its updated tenancy records, the estate office was not aware that the exemption reason was incorrectly input. As a result, the household had not been required to declare household income biennially since 1992 (i.e. 11 HSP cycles had so far been omitted).

Audit comments

4. In Audit's view, in each biennial household income review, the HD should check the validity of the exemption reasons captured in its computer system. Besides, the HD should also collect relevant evidence during their biennial inspections of household premises.

Source: HD records

Appendix I
(para. 3.34 refers)

Case 6

Exemption indicator not updated in Estate B

1. In March 1978, the HD granted the subject flat which accommodated two separate families on a sharing basis at the time of a re-housing exercise. The tenants of both families subsequently got married, one in 1983 and the other in 1985, and the two families had their own children. In December 1993, the HD approved the household splitting request of a family to another separate flat. In 1994, the household should be subject to declaration of household income biennially under the HSP as the tenants had been living in the PRH flat for 10 years and the exemption reason became invalid after the household splitting.

2. In June 2013, Audit visited the estate office and reviewed the subject tenancy file. Audit noted that there were four members with ages ranging from 26 to 63 living in the flat, and should be subject to the household income declaration. Upon Audit enquiry, the estate staff explained that an exemption code "SHT — Sharing Tenancy" was captured by the computer and thus the household had not been included in the HSP review exercise.

3. As there was no procedure for the HD to cross-check the exemption reasons against its updated tenancy records, the estate office was not aware that the exemption reason was incorrectly input. As a result, the household had not been required to declare household income biennially since 1994 (i.e. 10 HSP cycles had so far been omitted).

Audit comments

4. In Audit's view, in each biennial household income review, the HD should check the validity of the exemption reasons captured in its computer system. Besides, the HD should also collect relevant evidence during their biennial inspections of household premises.

Source: HD records

Appendix J

Acronyms and abbreviations

AAS	Application and Allocation System
AHM	Assistant Housing Manager
Audit	Audit Commission
AWT	Average waiting time
C1P	Converted One Person
DTMO	District Tenancy Management Offices
DTMS	Domestic Tenancy Management Sub-system
EFAS	Express Flat Allocation Scheme
EMD	Estate Management Division
EMMS	Estate Management and Maintenance System
ETW	Elapsed time while waiting
HA	Hong Kong Housing Authority
HD	Housing Department
HM	Housing Manager
HO	Housing Officer
HOS	Home Ownership Scheme
HSC	Housing for Senior Citizen
HSP	Housing Subsidy Policy
LTHS	Long Term Housing Strategy
LU	Lettings Unit
m^2	Square metres
MASHM	Mobile Application System for Housing Management

MS	Most serious
OP	Occupancy position
PDA	Personal Digital Assistant
PHRM	Public Housing Resources Management Sub-section
PRH	Public rental housing
QPS	Quota and Points System
RCM	Regional Chief Manager
RCSU	Registration and Civil Service Unit
SHC	Subsidised Housing Committee
SRA	Policy on Safeguarding Rational Allocation of Public Housing Resources
UO	Under-occupation
WL	Waiting List
WLIL	Waiting List Income Limit
WLU	Waiting List Unit

CHAPTER 4

Architectural Services Department
Administration Wing,
Chief Secretary for Administration's Office

Tamar Development Project

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

TAMAR DEVELOPMENT PROJECT

Contents

TAMAR DEVELOPMENT PROJECT

Executive Summary

1. Tamar Complex is a landmark at Central waterfront. It occupies a site of 4.2 hectares, and comprises the Central Government Complex (CGC) and the Legislative Council (LegCo) Complex (LCC) of the Hong Kong Special Administrative Region. The objectives of the Tamar Development Project were to meet the increase in demand for office space and modern-working-environment requirements of the Government and LegCo. The Project was implemented under a design-and-build arrangement. Before selecting a contractor (Contractor A) and his design for the Project, the Government had launched a two-month exhibition of the project designs proposed by four tenderers and invited members of the public to express views and comments on the four designs.

2. The Architectural Services Department (ArchSD) was responsible for administering the works contract (Contract A) of the Project and supervising the construction works. In June 2006, the Finance Committee (FC) of LegCo approved funding of $5,168.9 million for the design and construction of the Project. In December 2009, the Approved Project Estimate of the Project was approved by the FC to increase to $5,528.7 million. Contract A commenced in February 2008 and was largely completed on schedule in September 2011. The Audit Commission (Audit) has recently conducted a review of the Government's planning and implementation of the Project, with a view to identifying areas for improvement.

Selection of project design and contractor

3. In October 2005, the Financial Secretary set up the Special Selection Board to oversee the tendering of the Tamar Development Project. In September 2006, the ArchSD invited four prequalified applicants to submit tenders for the Project. Subsequently, the tender sums of all four tenders received exceeded the contract sum provided in the Approved Project Estimate. In June 2007, the Board decided to set up the Tender Negotiation Team to conduct negotiation with Contractor A, who had obtained the highest overall tender score, with a view to reducing the tender sum to the contract sum provided in the Approved Project

Estimate. After several rounds of negotiation, in July 2007, Contractor A agreed, after making certain modifications to his tender, including modifying and removing certain works items originally included in the tender document, that the price of his tender be reduced to $4,940.3 million. In January 2008, the ArchSD awarded Contract A to Contractor A at a sum of $4,940.3 million (paras. 2.6 to 2.12).

4. ***Criteria for selecting tenderers for negotiation not stated in tender document.*** It was stated in the tender document that provisions of the Agreement on Government Procurement of the World Trade Organization would apply to the tender. According to the Agreement, a procuring entity shall ensure that, in the course of negotiations, any elimination of participants is carried out in accordance with the criteria set forth in the tender document of a tender exercise, and all modifications to the technical requirements of the tender exercise are transmitted in writing to all remaining participants in the negotiations. However, Audit notes that no criteria for selecting tenderers for negotiations were stated in the tender document, and some works items originally included in the tender document had been modified or removed during tender negotiation with Contractor A, but the other three tenderers were not informed of such modifications or removal (paras. 2.13 to 2.17).

5. ***Price ceiling not stated in tender document.*** Notwithstanding that the Special Selection Board considered it not practical or in the public interest to seek additional funding from the FC, a price ceiling of the contract sum provided in the Approved Project Estimate was not stated in the tender document. It transpired that the tender sums of all four tenders received exceeded the contract sum (paras. 2.19 and 2.20).

Implementation of contract works

6. The contract works were substantially completed on 1 September 2011, almost four months later than the original target completion date. Audit notes that one reason leading to the delay in works completion was the additional time taken in completing Footbridge A, which spans over Harcourt Road and is the main pedestrian passage for Tamar Complex (paras. 3.6 to 3.8).

7. ***Additional time taken in completing Footbridge A.*** The cost of Footbridge A only accounted for 0.7% of that of the Project. However, the ArchSD had taken 18 months from contract commencement to instructing Contractor A to commence works for Footbridge A, and Contractor A had taken another 15 months from receiving the ArchSD's instruction to commencing works for Footbridge A. Extension of time of about four months was granted for the related works. Audit notes that one reason for the additional time taken in completing Footbridge A was the ArchSD's lack of experience in administering works for constructing a footbridge located in busy-traffic areas with many underground utility facilities (paras. 3.8 and 3.10 to 3.13).

8. ***2006 Design Checklist not stated in tender document.*** The Tamar Development Project was the first Government project adopting seismic-resistant measures for building structures. As stated in the tender document, the design and construction of structures should comply with the Mainland's Code for Seismic Design of Buildings issued in 2001. After contract award, based on consultancy advice, the ArchSD considered that the seismic-resistant measures should also comply with the Design Checklist for Buildings Exceeding Limits issued by the related Mainland Authority in September 2006. However, the 2006 Design Checklist was not stated in the tender document. As a result, Contractor A was successful in making a financial claim of $150 million, of which $24 million was related to works acceleration and disruption, additional labour, plant and resources and overtime work (paras. 3.20 to 3.27).

Changes of contract requirements

9. In May 2006, the Property Vetting Committee approved the accommodation requirements of the CGC and the LCC. For the CGC, a total Net Operating Floor Area of 62,340 square metres (m^2) was provided, including a 10% area allowance for meeting the long-term requirements of the Government Secretariat. Regarding the LCC, a total of 16,090 m^2 of Net Operating Floor Area was provided, but without including any area allowance for future expansion. The ArchSD incorporated these area requirements into the tender document (paras. 4.2 and 4.13).

10. ***Additional area requirements made only after award of contract.*** In January 2009, the LegCo Secretariat informed the Administration that additional area was needed for the LCC, mainly to meet space requirements of additional LegCo staff. In April 2010, the ArchSD and Contractor A entered into a supplementary agreement for the construction of an additional Net Operating Floor Area of 1,415 m^2 at the LCC at a cost of $113 million, of which $36 million was related to works acceleration and disruption, and additional design fee. Audit considers that, had the additional LCC area requirement been included in the tender document, the additional cost of $36 million might have been saved or reduced (paras. 4.3, 4.15 and 4.16).

11. ***Long payback periods of some energy-efficiency equipment.*** According to a Joint Circular issued by the Development Bureau and the Environment Bureau in April 2009, the maximum payback period of energy-efficiency measures would normally be capped at nine years. However, Audit examination revealed that the payback periods of six items of energy-efficiency equipment installed at Tamar Complex would exceed nine years, ranging from 25 to 176.5 years (para. 4.32 and Appendix E).

Tamar Complex commissioning

12. ***Defects and outstanding works not yet rectified and completed.*** Audit notes that, as of November 2011 (when the overall handover was near completion), the works of 88,960 items (some 75% of all defects and outstanding works identified) had not been completed. As of August 2013, one year after expiry of the maintenance period of the CGC and the LCC, 495 items of defects and 2,260 items of minor defects had still not been rectified (paras. 5.5 and 5.6).

13. ***Fresh-water-supply system not fully sterilised before use.*** According to Water Supplies Department Circular Letter No. 6/2002, newly installed fresh water mains of a building should be cleaned and sterilised before they are put into operation. However, the fresh-water-supply system of Tamar Complex had not been fully sterilised before the Complex commissioning (paras. 5.15 and 5.23).

Audit recommendations

14. **Audit recommendations are provided in the respective sections of this Audit Report. This Executive Summary only highlights the key recommendations. Audit has *recommended* that, in implementing a related works project in future, the Administration should:**

Selection of project design and contractor

(a) **remind Government Bureaux and Departments of the need to state in the tender document the criteria for selecting tenderers for negotiations as far as practicable (para. 2.23);**

Implementation of contract works

(b) **take measures to minimise any delay in completing an ancillary structure which will entail a knock-on effect on the timely commissioning of the main project component (para. 3.14(a));**

(c) **in administering works for constructing a footbridge in busy-traffic areas with many underground utility facilities, adopt a foundation design that would not require relocation of utility services as far as possible (para. 3.14(b)(i));**

(d) **include in the tender document all standards or guidelines which would affect the works requirements (para. 3.33(a));**

Changes of contract requirements

(e) **in assessing the accommodation requirements of new buildings, provide an appropriate expansion factor for space requirements if there is the likelihood of an increase in space requirements in the near future (para. 4.22);**

(f) **incorporate all works requirements into the tender document as far as possible, and avoid making changes to works requirements after contract award (para. 4.23);**

(g) **take measures to ensure that the payback periods of individual items of energy-efficiency equipment are capped at nine years as far as possible (para. 4.45(a));**

Tamar Complex commissioning

(h) **take measures to ensure that all defects and outstanding works are respectively rectified and completed within the maintenance period or as soon as practicable thereafter (para. 5.13(b)(i)); and**

(i) **take measures to ensure that the fresh-water-supply system is fully disinfected before building commissioning (para. 5.26(a)).**

Response from the Administration

15. The Administration agrees with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 The Tamar site is located in Central near the waterfront. It was originally a basin used for a naval base. Subsequent to the relocation of the naval base to Stonecutters Island, reclamation of the basin took place from 1994 to 1997 to form a site of 5.3 hectares. In April 2002, the Government announced a plan to develop the Tamar site into a prime civic centre comprising the Central Government Complex (CGC) and the Legislative Council (LegCo) Complex (LCC) — the Tamar Development Project. According to information provided to LegCo, the then Central Government Offices (CGO) and the then LegCo Building could not meet the demand for office space and modern-working-environment requirements, and the development of the Tamar site could provide a long-term solution to address these problems. In November 2003, in view of the impact of the Severe Acute Respiratory Syndrome outbreak and the adverse financial situation at that time, the Government decided to defer the Project. In October 2005, subsequent to improvement in the economy, the Government re-activated the Project.

Responsible Government departments

1.3 The Government adopted a design-and-build arrangement for implementing the Tamar Development Project, under which a contractor would be appointed for carrying out both design work and construction works of the Project. In October 2005, the Financial Secretary set up a Special Selection Board (Note 1) to oversee the tendering of a contract for the Project. Furthermore, a Technical

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Note 1: *The Board was chaired by the Chief Secretary for Administration with members comprising two LegCo Members, the Permanent Secretary for Financial Services and the Treasury (Treasury) and the then Permanent Secretary for Housing, Planning and Lands (Planning and Lands) appointed on a personal capacity, and a university professor in architecture.*

Introduction

Committee (Note 2) was appointed under the Special Selection Board to carry out the tender assessment of contractors for the Project. The Government departments responsible for the Project included:

(a) the Architectural Services Department (ArchSD) which was the Employer's Representative in administering the works contract and the Supervising Officer in supervising the construction works;

(b) the Property Vetting Committee (Note 3) which, based on the Accommodation Regulations (Note 4), conducted vetting of and granted approvals for the accommodation requirements of pertinent Government Bureaux and Main Offices (B/Os — Note 5) and LegCo; and

(c) the Administration Wing of the Chief Secretary for Administration's Office (Administration Wing) which provided assistance to the Special Selection Board in selecting and appointing the contractor for the Project, coordinated the accommodation requirements of the pertinent B/Os and LegCo, sought approval of the Property Vetting Committee on accommodation requirements, and coordinated with the ArchSD on incorporating the accommodation requirements into the design of the Project.

Note 2: *The Committee was chaired by the then Permanent Secretary for the Environment, Transport and Works (Works), with members comprising representatives from the Financial Services and the Treasury Bureau, the Administration Wing of the Chief Secretary for Administration's Office, the Architectural Services Department and the Planning Department.*

Note 3: *The Committee was chaired by an Assistant Director of the ArchSD, comprising a member from the Government Property Agency and another member from the Financial Services and the Treasury Bureau.*

Note 4: *Accommodation Regulations promulgate Government accommodation policies and procedures.*

Note 5: *Main Offices include offices of the Chief Executive, the Chief Secretary for Administration and the Financial Secretary.*

Contract award

1.4 A chronology of key events of the tendering and works implementation of the Tamar Development Project is shown in Table 1.

Table 1

Chronology of key events
(2005 to 2013)

Month	Key event
(a) December 2005	The ArchSD invited interested parties to apply for prequalification assessments for undertaking the Project (Note) with a view to identifying contractors with proven design, managerial, financial and technical capabilities.
(b) March 2006	Four applications for prequalification assessments were received.
(c) June 2006	The Finance Committee (FC) of LegCo approved funding of $5,168.9 million for the design and construction of the Project.
(d) September 2006	After prequalification assessments by the Technical Committee and endorsement by the Special Selection Board, the four prequalified applicants (Contractors A, B, C and D) were invited to submit tenders for the Project.
(e) March 2007	The Government launched a two-month exhibition of the project designs proposed by the four tenderers, and invited members of the public to express views and comments on the four designs.
(f) January 2008	After assessing the tenders submitted by Contractors A to D, the Government awarded a design-and-build contract (Contract A) to Contractor A, targeting for completion in May 2011 at an estimated cost of $4,940.3 million.
(g) February 2008	Construction works commenced.

Table 1 (Cont'd)

Month	Key event
(h) December 2009	The FC approved increasing the Approved Project Estimate (APE) of the Project from $5,168.9 million by $359.8 million to $5,528.7 million, mainly for financing the construction of additional areas for the LCC and the installation of additional environmental and energy-conservation measures.
(i) July 2011	Subsequent to the substantial completion of the major parts of the Project in end July 2011, the Executive Council (ExCo) Chamber and its Secretariat, LegCo Chamber and its Secretariat, LegCo Members' Offices, the Chief Executive's Office and relevant B/Os moved into Tamar Complex by phases.
(j) August 2013	Up to August 2013, the account of the Project had not been finalised, and the latest estimated project cost amounted to $5.4 billion.

Source: *ArchSD records*

Note: *According to the ArchSD, this prequalification exercise aimed at inviting five applicants who obtained the highest prequalification scores to submit tenders for the design-and-build contract.*

Remarks: *From 1997 (completion of site reclamation) to 2007, the Tamar site had been put into various short-term uses, such as a fee-paying car park, exhibition pavilions and venues for the Harbour Fest and World Carnival.*

Tamar Complex

1.5 Located at the waterfront in Central, Tamar Complex encompasses the CGC and the LCC which are landmark buildings of the Hong Kong Special Administrative Region. It occupies a site of 4.2 hectares (42,000 square metres (m^2)) and comprises:

(a) the CGC with a Construction Floor Area (CFA) of 133,034 m^2;

(b) the LCC with a CFA of 45,160 m^2; and

(c) open space with an area of 21,020 m^2 (including Tamar Park with an area of 17,522 m^2) which is open for public visits.

Furthermore, two levels of basement floors with a total CFA of 42,942 m^2 are provided, which house a car park for use by authorised persons and plant rooms for Tamar Complex. Tamar Complex is connected by two covered footbridges, one leading to a footpath near the Admiralty MTR Station (Footbridge A) and the other to the Admiralty Walkway System which links to the CITIC Tower on Tim Mei Avenue (Footbridge B). Table 2 shows offices and facilities of the CGC and the LCC, Photograph 1 is a picture of Tamar Complex and Figure 1 displays its layout plan.

Table 2

Offices and facilities of the CGC and the LCC

Building	Floor (No.)	Area (m^2 in CFA)	Use
CGC Office Block West Wing	27 floors	123,109	Offices of the Chief Secretary for Administration, the Financial Secretary and 12 Policy Bureaux, and ancillary facilities
CGC Office Block East Wing	23 floors		
CGC Low Block	4 floors	9,925	The Chief Executive's Office, the ExCo Chamber and its Secretariat offices, and ancillary facilities
LCC High Block	11 floors	45,160	LegCo Chamber and its Secretariat offices, offices of the LegCo Members and ancillary facilities
LCC Low Block	5 floors		

Source: ArchSD records

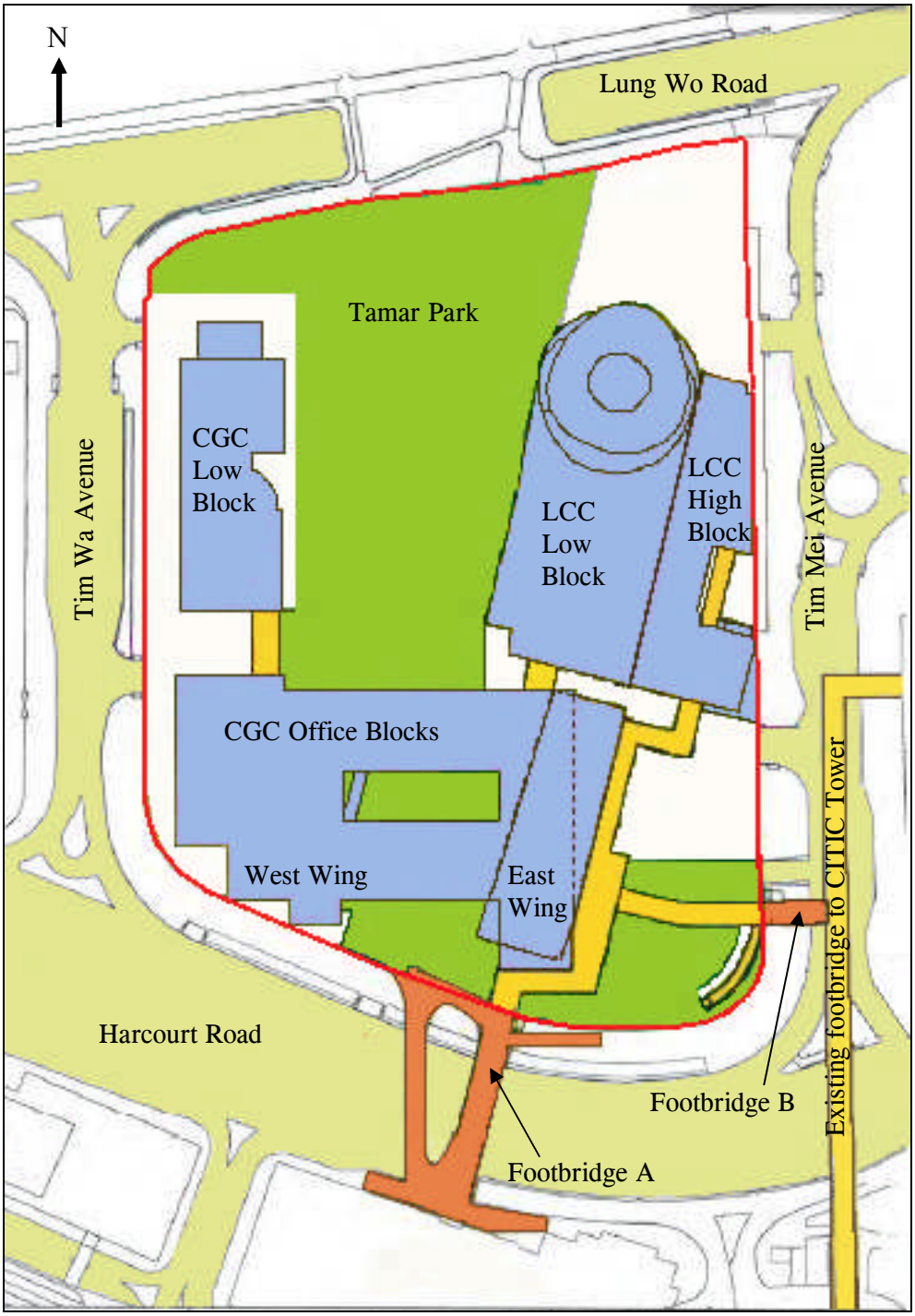
Photograph 1

Tamar Complex

Source: ArchSD records

Figure 1

Layout plan of Tamar Complex



Legend: Tamar Development Project boundary

Source: ArchSD records

Premises formerly occupied by the Government and LegCo

1.6 The ExCo Chamber and Government offices relocated to the CGC had originally occupied premises mainly in the former CGO and Murray Building in Central, and the LegCo Chamber and some of LegCo offices relocated to the LCC had originally occupied the former LegCo Building in Central. As of August 2013, refurbishment and renovation works were in progress at the former CGO and the former LegCo Building, and action was also in progress to convert Murray Building into a hotel for heritage conservation purposes.

Audit review

1.7 The Tamar Development Project, with an APE of $5.5 billion, is one of the major Government capital projects in recent years and is a landmark of Hong Kong. The Project was largely completed on schedule and Tamar Complex houses the important offices and facilities of the Government, including ExCo, LegCo and offices of the Chief Executive, the Chief Secretary for Administration, the Financial Secretary and Policy Bureaux.

1.8 The Audit Commission (Audit) has recently conducted a review of the Government's planning and implementation of the Tamar Development Project, with a view to identifying areas for improvement. The review focuses on the following areas:

(a) selection of project design and contractor (PART 2);

(b) implementation of contract works (PART 3);

(c) changes of contract requirements (PART 4);

(d) Tamar Complex commissioning (PART 5); and

(e) way forward (PART 6).

Audit has identified areas where improvements can be made by the Government in implementing capital works projects in future, and has made recommendations to address the issues.

General response from the Administration and the Legislative Council Secretariat

1.9 The Administration and the LegCo Secretariat agree with the audit recommendations. The Secretary for Development thanks Audit for undertaking this audit review.

Acknowledgement

1.10 Audit would like to acknowledge with gratitude the full cooperation of the staff of the Development Bureau (DEVB), the Financial Services and the Treasury Bureau (FSTB), the Administration Wing, the ArchSD, the Buildings Department (BD), the Government Property Agency and the LegCo Secretariat during the course of the audit review.

PART 2: SELECTION OF PROJECT DESIGN AND CONTRACTOR

2.1 This PART examines the arrangements for selecting the project design and the contractor for the Tamar Development Project.

Contractor selection

2.2 The selection of the contractor for the Tamar Development Project comprised two stages, namely:

(a) Stage One for the prequalification of interested applicants; and

(b) Stage Two for inviting the prequalified applicants to submit tenders for the Project.

Prequalification exercise

2.3 In April 2002, the Administration Wing informed LegCo that, to ensure that the proposed form, scale and massing of the CGC and the LCC would integrate coherently with the landscape design and setting of the waterfront promenade, the Administration proposed to adopt an integrated design-and-build arrangement for all the developments on the Tamar site.

2.4 According to information provided to the then LegCo Panel on Planning, Lands and Works in November 2005, the Administration considered that adopting a design-and-build arrangement, instead of conducting a separate open-design competition for the Project, would have the following advantages:

(a) a proper design competition of the required scale would involve a time span of some 24 months, from the preparation of the design brief to the selection of the winner. This would have obvious programme implications;

(b) the design-and-build approach could also achieve the effect of securing a world-class design through the tender exercise, and ensure quality design submissions by attaching prominent weighting to the design schedule and related requirements; and

(c) each design-and-build tenderer was obliged to ensure the cost-effectiveness of the implementation plan for his design, taking full account of technical advances on construction and functional requirements of the Government and LegCo.

2.5 In December 2005, the ArchSD gazetted invitations to invite eligible applicants to apply for prequalification assessments for undertaking the Project. Among other things, the eligible applicants should be a contractor on the List of Approved Contractors for Public Works, Buildings Category, Confirmed Group-C (Note 6), and had completed at least one building contract of a value of not less than $500 million in the past five years. The prequalification document contained details of the overall design objectives, general user requirements and selection criteria for prequalification. Applicants for prequalification were required to prepare submissions to demonstrate their managerial, financial and technical capabilities, as well as concept designs for the Project, which should illustrate, among other requirements, integration of Tamar Complex with its surrounding areas.

2.6 In March 2006, the ArchSD received four applications for prequalification assessments. After the Technical Committee's examination of the applicants' technical, managerial, financial and design capabilities, and capability to undertake the Project within the prescribed time frame and deliver the prescribed quality, the Special Selection Board approved shortlisting all four applicants for Stage Two of the tender exercise (see para. 2.2(b)). In August 2006, the Administration Wing informed the Special Selection Board that the contract cost was estimated to be over $4,800 million. In September 2006, the ArchSD issued the tender document to the four applicants and invited them to submit tenders for the Project.

Note 6: *The DEVB administers a list of approved contractors for public works. In December 2005, a Group-C contractor was allowed to tender for a contract of a value exceeding $50 million. In June 2009, the value was revised to $75 million.*

Tendering exercise

2.7 The following information was stated in the tender document:

(a) the FC had approved funding of up to $5,168.9 million for the Project. The APE included not just the cost of the design and construction works under the design-and-build contract, but also that of other items such as furniture and equipment, consultant services, provisions for project-price fluctuation and contingencies;

(b) the tenders would be assessed based on a pre-determined marking scheme, as follows:

Factor	Percentage
Quality:	
• Design and aesthetic	27%
• Functional and technical	24%
• Planning, sustainability and environment	9%
	60%
Price	40%
Total	100%

(c) the provisions of the Agreement on Government Procurement of the World Trade Organization (WTO Government Procurement Agreement) would apply to this tender (Note 7); and

(d) the Government reserved the right to negotiate with any tenderer about the terms of his offer.

Note 7: *According to the FSTB, Government contracts for construction services with a value of 5 million Special Drawing Rights or above should comply with the WTO Government Procurement Agreement. The amount was equivalent to $52 million when the invitation to apply for prequalification for the Tamar Development Project was issued in December 2005.*

2.8 At the time of issuing the tender document in September 2006, according to ArchSD records, of the $5,168.9 million of APE, $4,920.3 million (95%) was for meeting the cost of Contract A, leaving $248.6 million (5%) for meeting the costs of items such as furniture and equipment, consultant services, provisions for project-price fluctuation and contingencies.

2.9 In February 2007, the ArchSD received tenders with project designs submitted by Contractors A, B, C and D. All the tender sums exceeded $4,920.3 million. From March to May 2007, the Administration Wing organised a public viewing exercise where members of the public were invited to provide views and comments on the design and aesthetic aspects of the four project designs. After drawing lots, the four designs were designated as Designs A, B, C and D respectively. Based on the public comments collected from exit polls, phone polls and in writing, a consultant engaged by the Administration Wing analysed the public opinions and concluded that Design D was narrowly ahead of Design A, with Design B and Design C lagging behind by a substantial margin. The public views collected were presented to the Special Selection Board for consideration.

2.10 Assessments of the four tenders were conducted by the Special Selection Board based on the marking scheme (see para. 2.7(b)). A tender (Tender A) containing Design A submitted by Contractor A obtained the highest overall tender score. In June 2007, in view of the fact that the price of Tender A exceeded the contract cost provided in the APE, the Special Selection Board, after deliberation, decided to set up a Tender Negotiation Team (Note 8) for conducting tender negotiation with Contractor A, with a view to reducing the tender sum to within the sum provided in the APE. The Board took into account legal advice on this issue and considered it not practical or in the public interest to seek additional funding from the FC or to conduct re-tendering (Note 9).

Note 8: *The Team comprised the Permanent Secretary for Development (Works) and representatives from the ArchSD.*

Note 9: *In October 2013, the ArchSD informed Audit that:*

(a) the options of seeking additional funding from the FC or re-tendering would result in a project delay. If re-tendering was conducted, it would possibly result in a higher tender sum; and

(b) in the year following the tender closing in February 2007, according to the ArchSD Building Works Tender Price Index, the building cost had increased by 36%.

Selection of project design and contractor

2.11 In July 2007, after several rounds of negotiation, Contractor A agreed that the price of Tender A be reduced to $4,940.3 million (Note 10) after making the following modifications in Tender A:

(a) correcting the arithmetic errors in the tender;

(b) reducing the contract contingency sum in the tender;

(c) removing certain works items which were not specified in the tender document but offered by the tenderer (known as better-offer proposal items — Note 11);

(d) modifying and removing certain works items originally included in the tender document (Note 12); and

(e) adjusting the provision of some miscellaneous items (Note 13).

2.12 In view of the fact that adjustments made to Tender A might affect the tender scores and ranking of the four tenders, the Tender Negotiation Team conducted a review of the tender scores of the four tenders received by making similar adjustments (on both quality and price aspects) to the other three tenders. The Team found that the ranking of the four tenders would remain unchanged after making the adjustments. In January 2008, after obtaining approval from the Special Selection Board, the ArchSD awarded Contract A to Contractor A at a sum of $4,940.3 million, which was scheduled for completion in May 2011.

Note 10: *At that time, following a review of the project budget, the ArchSD identified a saving of $20 million, comprising savings in the consultancy fees of $2.7 million and project contingency of $17.3 million. The contract sum provided in the APE therefore increased from $4,920.3 million to $4,940.3 million.*

Note 11: *For example, Net Operating Floor Area of 3,756 m^2 at the CGC and some loading/unloading space exceeding the tender requirements were removed from Tender A.*

Note 12: *For example, the provision of 18 site supervisory staff was removed from Tender A. According to the ArchSD, additional ArchSD in-house supervising staff were provided to enhance the works supervision.*

Note 13: *For example, sums provided for audio-visual and library equipment, and radio communication and electronic equipment were reduced.*

Areas for improvement

Criteria for selecting tenderers for negotiation not stated in tender document

2.13 In May 1997, Hong Kong acceded to the WTO Government Procurement Agreement. The objective of the Agreement is to provide for open and fair competition among domestic and foreign service providers through procedures designed to ensure that all tenderers are treated by procuring entities covered by the Agreement on equal footing. Among other things, the WTO Government Procurement Agreement requires that:

(a) a procuring entity may conduct negotiations when such intent has been indicated in the tender document, or when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the tender notices or documentation;

(b) negotiations shall primarily be used to identify the strengths and weaknesses in tenders; and

(c) a procuring entity shall not, in the course of negotiations, discriminate between different suppliers. In particular, a procuring entity shall ensure that:

(i) any elimination of participants is carried out in accordance with the criteria set forth in the tender notices and documentation;

(ii) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;

(iii) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and

(iv) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

2.14 In a press release on 29 September 2006 relating to the invitation of the four prequalified applicants to submit tenders for Contract A, the Government stated that:

(a) as mandated under the WTO Government Procurement Agreement, the tender process had to be conducted in a fair and non-discriminatory manner; and

(b) relevant parties should avoid comments, reports or moves that might prejudice or be perceived as prejudicing the fairness or integrity of the tender process throughout the tender exercise.

2.15 According to the WTO Government Procurement Agreement, in the course of negotiations, any elimination of participants should be conducted in accordance with the criteria set forth in the tender document (see para. 2.13(c)(i)) and all modifications to the technical requirements should be transmitted in writing to all remaining participants in the negotiation (see para. 2.13(c)(ii)). Audit however found in this case that some works items originally included in the tender document had been modified or removed during tender negotiation with Contractor A (see para. 2.11(d)), but the other three tenderers were not informed of such modifications or removal. In response to Audit enquiries in September and October 2013, the Administration Wing and the FSTB informed Audit the following:

Administration Wing

(a) the whole process of tender evaluation and selection of the contractor had been conducted under the steer of a high-level Special Selection Board, which was conscious of the need to comply with the WTO Government Procurement Agreement requirements and all relevant tendering rules and regulations. The Board, taking into account all relevant factors including the consideration that the negotiation with Contractor A did not affect the ranking of the tenders (see para. 2.12), was satisfied that the tendering process and the tender negotiation had been conducted in compliance with established procedures;

(b) negotiation with Contractor A was conducted in accordance with Stores and Procurement Regulations (SPRs — Note 14) 385(d)(ii) and (e) (see Appendix A);

FSTB

(c) according to SPR 385(e), negotiations under SPR 385(d)(ii)-(iv) should normally be conducted only with the single conforming tenderer or with the conforming tenderer whose tender had been found to be clearly the most advantageous to the Government in relation to the evaluation criteria (see Appendix A);

(d) in this case, the Special Selection Board found the offer of Contractor A (with the highest overall tender score) to be clearly the most advantageous to the Government and decided to negotiate with Contractor A only. This was in line with SPR 385(e); and

(e) the requirements in paragraph 2.13(c) (in particular insets (c)(iii) and (iv)) should not apply in the present case where only one tenderer was selected for negotiation and the revised technical requirements stated in the tender document did not affect the final outcome of the selection process.

2.16 Regarding the reference by the Administration Wing and the FSTB in paragraph 2.15 to SPR 385(d) and (e) (see Appendix A), Audit would like to point out that, since SPR 385(d) and (e) were not stated in the tender document, they might not be binding conditions of this tendering exercise. In this connection, as stated in the tender document, the provisions of the WTO Government Procurement Agreement would apply to this tendering exercise (see para. 2.7(c)).

Note 14: *Under the Public Finance Ordinance (Cap. 2), the Government procurement process is governed by the SPRs.*

2.17 According to the WTO Government Procurement Agreement, in the course of negotiations, a procuring entity shall ensure that any elimination of participants is carried out in accordance with the criteria set forth in the tender notices and documentation (see para. 2.13(c)(i)). Audit however notes that no criteria for selecting tenderers for negotiations were stated in the tender document. In order to enhance transparency and remove any ambiguity in the tendering process, in Audit's view, the FSTB needs to remind Government Bureaux and Departments (B/Ds) of the need to state in the tender document the criteria for selecting tenderers for negotiation as far as practicable.

Price ceiling not stated in tender document

2.18 When seeking funding of $5,168.9 million from the FC in June 2006, because the design of the Project was not known at that time, the ArchSD made a cost estimate of the Project with reference to the unit-construction cost of Grade-A private office buildings.

2.19 It was stated in the tender document that the APE of $5,168.9 million included not just the cost of Contract A, but also other items such as furniture and equipment, consultant services, provisions for project-price fluctuation and contingencies. At the time of issuing the tender document in September 2006, the ArchSD had estimated that only $4,920.3 million of the APE of $5,168.9 million was provided for meeting the cost of Contract A (contract fund — see para. 2.8). However, this contract fund was not stated in the tender document as the price ceiling. During deliberation in August 2006, the Special Selection Board concluded that setting a tender-price ceiling might constrain the design creativity of the tenderers, and induce the tenderers to submit tender proposals with prices close to the price ceiling, hence reducing their incentive to submit designs with lower costs.

2.20 As it transpired, the tender sums of all four tenders received exceeded $4,920.3 million. Upon noting that the tender sums of all the four tenders received exceeded the contract fund available, the Special Selection Board considered it not practical or in the public interest to seek additional funding from the FC or to conduct re-tendering (see para. 2.10). After conducting negotiation with Contractor A and making modifications to Tender A and revising the contract sum under the APE (see para. 2.11), the ArchSD awarded Contract A to Contractor A at an adjusted price of $4,940.3 million.

2.21 In September and October 2013, the Administration Wing, the ArchSD and the FSTB informed Audit that:

Administration Wing

(a) it was the conscious decision of the Special Selection Board at its meeting in August 2006, after evaluation of all the pros and cons, that a tender-price ceiling needed not be imposed as a mandatory requirement for the Tamar Development Project and only the APE should be set out in the tender document;

(b) by setting out in the tender document the project scope and APE, this would suffice to convey to the tenderers the message about keeping the project cost within the budget;

(c) professionals should be able to work out the order of cost for the estimated value of the contract upon knowing that the APE was meant to also cover components other than the contract under bidding;

ArchSD

(d) including a price ceiling in a tender exercise was not a norm. The Special Selection Board had discussed the inclusion of a price ceiling and decided not to include it in the tender document;

FSTB

(e) according to SPR 345(d), Government departments should not normally disclose the estimated contract value to the tenderers as it might become a main guiding factor in the preparation of their tender proposals, which might be reduced or expanded unnecessarily, thus undermining the principles of competition and value for money. Setting a tender-price ceiling might preclude innovative designs, which should not be set as a norm;

(f) there were other means of imposing budgetary control in a tender exercise, such as capping the quality of the finishing in the tender requirements or revising the price and non-price weightings in the tender marking schemes to reflect the importance attached to the quality aspects where appropriate;

(g) there were various options that a procuring department might explore when the returned tender sums of a tender exercise exceeded the APE, including:

(i) conducting price negotiation with the most advantageous tenderer (selected in accordance with the tenderer evaluation criteria);

(ii) cancellation of the tender exercise;

(iii) conducting re-tendering after re-packaging the works, reducing the scope of works, and incorporating cost-reduction measures; and

(iv) conducting re-tendering the same scope of works at a later date when there was stronger market competition if the overall project programme allowed; and

(h) the decision of not seeking APE increase should not be considered as a "practice". As stipulated in Financial Circular No. 3/2012 "Capital Works Programme", Directors of Bureaux and Directors of works departments must ensure that works expenditure stayed strictly within the APE and in strict accordance with the scope of the project as approved by the FC or under delegated authority. The Controlling Officer of a project should seek to increase the APE once he was aware that the project estimate was expected to exceed the APE. In the case of the Tamar Development Project, the Special Selection Board's decision of not seeking additional funding from the FC or conducting re-tendering was made having regard to the prevailing circumstances at the time.

2.22 In Audit's view, if it is the Government's intention not to seek additional funding from the FC for a project, the APE will unavoidably form a resource constraint on the project, and a tender-price ceiling should be included in the tender document. This arrangement will prevent tender sums from exceeding the contract fund available, and obviate the need to conduct tender negotiations with one or more tenderers for the purpose of reducing the tender sums to within the fund available, and make tender modifications (see paras. 2.13 to 2.17).

Audit recommendation

2.23 **Audit has *recommended* that the Secretary for Financial Services and the Treasury should remind B/Ds that they should state in the tender document the criteria for selecting tenderers for negotiations as far as practicable.**

Response from the Administration

2.24 The Secretary for Financial Services and the Treasury has said that:

(a) SPR 385(e) states that wherever possible, the criteria for selection of tenderers for negotiations shall be stated in the invitation to tender. Where such criteria have not been set forth in the invitation to tender, the selection of tenderers for negotiations must be based on objective and reasonable criteria; and

(b) in the recent exercise for streamlining procurement procedures (as promulgated vide Financial Circular No. 4/2013 "Streamlining Procurement Procedures" of 27 June 2013), the role of Controlling Officers to observe and uphold a culture of compliance with the requirements set out in the SPRs, regularly remind all staff concerned about their need to always comply with the SPRs and closely monitor their compliance is highlighted in the revised SPR 125 for B/Ds to observe.

PART 3: IMPLEMENTATION OF CONTRACT WORKS

3.1 This PART examines the implementation of works under Contract A, focusing on:

(a) construction of Footbridge A (paras. 3.7 to 3.15); and

(b) implementation of seismic-resistant building works (paras. 3.16 to 3.36).

Project cost increase

3.2 In December 2009, the Administration proposed and the FC approved increasing the APE from $5,168.9 million by $359.8 million to $5,528.7 million. Table 3 shows the justifications for the additional funding.

Table 3

Justifications for additional funding

Justification	Amount ($ million)
(a) Building works and building services for the enhanced communal facilities and Secretariat office of LegCo	113.0
(b) Additional environmental and energy-conservation measures	70.9
(c) Additional contingencies and additional provisions for contract-price fluctuation adjustments (Note 1)	52.3
(d) Additional furniture and equipment	47.1
(e) Artworks	32.4
(f) Other works variations (Note 2)	44.1
Total	359.8

Source: Audit analysis of ArchSD records

Note 1: Contract A adopted a contract-price fluctuation adjustment system, under which payments to the contractor would be adjusted according to the "Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects" published by the Census and Statistics Department.

Note 2: These included enhanced electronic equipment and glass partitions for LegCo, enhanced barrier-free access provisions, provision of a cafe and additional consultancy fees.

3.3 As of March 2013, the total expenditure of the Tamar Development Project was $5,358.2 million, comprising $5,249.3 million for Contract A and $108.9 million for consultancy fees, and furniture and equipment. The additional contract cost of $309 million ($5,249.3 million less $4,940.3 million — see para. 2.12) was attributable to:

Particular	Amount ($ million)
(a) Supplementary Agreement No. 1 (SA1) — entered into in April 2010	195.5
(b) Supplementary Agreement No. 2 (SA2) — entered into in July 2010	25.0
(c) Supplementary Agreement No. 3 (SA3) — entered into in July 2011	150.0
(d) Variation orders	103.5
	474.0
Less: cost savings identified in contingencies and provisional items provided in Contract A (see para. 3.5)	(165.0)
Total contract cost increase	309.0

3.4 The major additional works giving rise to the additional contract cost included:

(a) SA1 with a cost of $195.5 million, mainly including works for constructing additional areas for the LCC ($113 million) and works for additional environmental and energy-efficiency measures ($70.9 million) — see PART 4;

(b) SA2 with a cost of $25 million, mainly including works for installing security facilities for major offices at the CGC. According to the Administration, in order to meet the confidentiality and security requirements, it was necessary to procure the security facilities after contract award; and

(c) SA3 with a cost of $150 million, mainly including works for providing additional steel reinforcement quantities and associated costs on seismic-resistant building works (see paras. 3.16 to 3.36).

3.5 Under Contract A, a total of 81 variation orders at a total estimated cost of $103.5 million had been issued, which mainly comprised works for changing the office layout and additional building services requirements. Of the financial provision of $228.8 million originally budgeted for contingencies and provisional items (works items not yet finalised at the time of contract award) in Contract A, $165 million had been used to partly meet the cost of additional works (see para. 3.3).

Additional time for contract completion

3.6 Contract A comprised works for seven Works Sections (Sections I to VII), which commenced on 11 February 2008 and were originally scheduled for completion on 11 May 2011 (a total of 1,186 days or 39 months). In the event, owing to various reasons, Extensions of Time (EOTs) ranging from 5.5 to 112.5 days had been granted to different Works Sections, and the contract works for the whole Project were substantially completed on 1 September 2011, which was 112.5 days (3 months and 20.5 days — see Appendix B) later than the original scheduled completion date.

Construction of Footbridge A

3.7 Under Works Section V of Contract A, Footbridge A of 66 metres long at an estimated cost of $39.8 million was required to be constructed over Harcourt Road. According to Contract A, the time of commencing the construction of Footbridge A was to be advised by the ArchSD. In the event, the ArchSD instructed Contractor A to commence the construction works on 17 August 2009, which was scheduled for completion on 11 May 2011. As it transpired, Footbridge A was completed on 1 September 2011, 3 months and 20.5 days later than the original scheduled completion date.

Areas for improvement

Knock-on effects of additional time in completing Footbridge A

3.8 Footbridge A is the main pedestrian passage for Tamar Complex and any delay in its completion would affect the time of commissioning Tamar Complex. In this connection, the ArchSD granted EOTs of 112.5 days (3 months and 20.5 days) for works under Footbridge A, including an EOT of 107 days owing to obstruction to works caused by the presence of underground cables, and an EOT of 5.5 days attributable to inclement weather and clearance of bombs discovered. According to the ArchSD, because a material delivery route had to be maintained for the footbridge construction, the delay in completing Footbridge A had knock-on effects on the completion of the CGC and the LCC (Works Sections I to IV). Accordingly, the ArchSD had to grant an additional EOT of 74 days (2 months and 13 days) for each of Works Sections I to IV. As a result, the substantial completion of the CGC and the LCC was deferred from 17 May 2011 (Note 15) to 30 July 2011.

3.9 According to Contract A:

(a) Contractor A should submit design and construction method of foundation works to the ArchSD for approval before commencement of related works;

(b) there were many utility facilities beneath the footpaths and pavement along both sides of Harcourt Road and adjacent to Admiralty Centre. Careful planning should be taken if works were proposed in these areas in order to avoid damage to the utilities and minimise any diversion works; and

(c) if diversion was unavoidable, Contractor A should liaise with utility companies and minimise any diversion work, and the diversion cost should be borne by Contractor A.

Note 15: *An EOT of 5.5 days was granted for the works for the CGC and LCC (Sections I to IV) due to the hoisting of Tropical Cyclone Warning Signal No. 8 and Black Rainstorm Warning, and clearance of bombs discovered, extending the original target completion date from 11 to 17 May 2011.*

3.10 According to the ArchSD, the works of the CGC and the LCC had not been delayed due to any default of Contractor A who did not have liability to pay any liquidated damages. In Audit's view, although Footbridge A only formed a small part of the whole project (0.7% in terms of cost), the additional time of 2 months and 13 days in commissioning the CGC and the LCC resulting from the long time taken in completing Footbridge A is undesirable. Therefore, in implementing a similar project in future, the ArchSD needs to take measures to minimise any delay in completing an ancillary structure which will entail a knock-on effect on the timely commissioning of the main project component.

18 months taken before instructing Contractor A to commence works

3.11 A chronology of key events of implementing works relating to Footbridge A is shown in Appendix C. Audit notes that soon after the commencement of Contract A, Contractor A took action to seek the Transport Department's approval for related temporary traffic management schemes. However, the ArchSD had taken 18 months from February 2008 to August 2009 before instructing Contractor A to commence works for Footbridge A. During the period, the ArchSD commenced public consultations in June 2008 (four months after commencement of Contract A) with the related District Council and later sought approval from the Chief Executive-in-Council regarding eight objections received. In the event, the Chief Executive-in-Council granted approval for the construction of Footbridge A in June 2009. The ArchSD needs to take earlier action on public consultations and resolving public objections in a similar situation in future.

15 months taken to commence the approved foundation works

3.12 As shown in Appendix C, Contractor A had taken 15 months from August 2009 (ArchSD's instruction for commencing works) to November 2010 before commencing the approved foundation works for Footbridge A. As early as September 2009, a utility company informed Contractor A that relocation of underground cables would not be feasible. In December 2009, the utility company further requested Contractor A to change the foundation design to avoid relocation of underground cables. In August 2010, after revising the foundation design twice, Contractor A finally identified a design which would avoid relocation of the underground cables.

3.13 In September 2013, the ArchSD informed Audit that, although it did not have ample experience and expertise in carrying construction works on public roads, it had spent significant efforts to resolve the utility-diversion and other site-constraint problems. In Audit's view, the ArchSD needs to draw lesson from this case which involved constructing a footbridge in busy-traffic areas having many underground utility facilities. For example, the ArchSD should consider seeking the advice and assistance of other relevant works departments (e.g. the Highways Department and the Civil Engineering and Development Department) when encountering similar problems in future.

Audit recommendations

3.14 **Audit has *recommended* that, in implementing a works project in future, the Director of Architectural Services should:**

(a) **take measures to minimise any delay in completing an ancillary structure which will entail a knock-on effect on the timely commissioning of the main project component, such as by conducting related public consultations and resolving public objections in a timely manner; and**

(b) **in administering works for constructing a footbridge in busy-traffic areas with many underground utility facilities:**

(i) **adopt a foundation design which will not require relocation of utility facilities as far as possible; and**

(ii) **consider seeking the advice and assistance of other relevant works departments.**

Response from the Administration

3.15 The Director of Architectural Services agrees with the audit recommendations. He has said that the ArchSD will, in implementing a works project in future:

(a) critically review the works programmes of individual ancillary structures to ensure that their completion will tie in with the overall project programme; and

(b) for works to be carried out on public roads in busy-traffic areas having many underground utility facilities, seek the assistance of the relevant B/Ds, including exploring the feasibility of entrusting that part of works to them for implementation.

Implementation of seismic-resistant building works

3.16 As of August 2013, the Buildings Ordinance (Cap. 123) did not stipulate any seismic-resistant requirement for building structures in Hong Kong.

3.17 In 2002, the BD commissioned a consultancy study on the seismic hazard and risk to buildings in Hong Kong. The draft final report of the study of June 2005 (Note 16) recommended that seismic design standards should be provided for the design of future buildings in Hong Kong, and that the capability of special existing buildings (that were required to remain operational for post-earthquake recovery purposes) to resist extreme earthquakes should be assessed.

3.18 In August 2006, on the grounds that the buildings of the Tamar Development Project were essential to remain operational for post-earthquake recovery purposes and it would be very difficult to retrofit the buildings with seismic-resistant requirements after commissioning of Tamar Complex, the Administration Wing and the ArchSD proposed that seismic-resistant requirements

Note 16: *The final report was issued in December 2007, which recommended the development of seismic-design standards for adoption in Hong Kong (see para. 3.29).*

should be incorporated into the building structures of the Tamar Development Project. According to the ArchSD, in the absence of seismic-resistant building standards in Hong Kong, implementation of seismic-resistant requirements should take into account the following factors:

(a) Seismic Intensity (Note 17) is the most important factor in implementing seismic-resistant requirements which should be based on the local seismic activities. The Mainland's Code for Seismic Design of Buildings issued in 2001 — PRC 2001 Code (Note 18) should be adopted as it included local seismic design information and requirements for Hong Kong;

(b) based on PRC 2001 Code and the Seismic Zonation Map of China published by the related Mainland authority, Hong Kong falls within the zone where seismic-resistant measures capable of resisting an earthquake of Seismic Intensity 7 (Note 19) should be incorporated into building structures; and

(c) implementation of seismic-resistant measures will improve the robustness and ductility of the building structures and enhance structural safety under extreme conditions, such as fire and explosions.

3.19 The then Environment, Transport and Works Bureau (ETWB) considered that all building structures of the Tamar Development Project should be designed for seismic-resistant purposes. The then Housing, Planning and Lands Bureau also advised that adopting PRC 2001 Code would likely render the building structures complying with the seismic requirements of the future code of practice to be developed for Hong Kong.

Note 17: *Seismic Intensity is an index for gauging the intensity of earthquake at a certain location based on the extent of ground motion during an earthquake.*

Note 18: *In the Mainland, compliance with PRC 2001 Code was mandatory for all building structures up to 29 July 2008. On 30 July 2008, PRC 2001 Code was replaced by an updated version (PRC 2008 Code) which provided improvement and updates on the Code.*

Note 19: *According to Mainland's national standards, seismic intensities are classified into 12 grades and Seismic Intensity 7 is of moderate magnitude.*

Building structures exceeding limits

3.20 PRC 2001 Code provided standards on seismic-resistant design measures for different structural forms of buildings. For structural forms of buildings falling outside those specified in the Code, they are referred to as "structures exceeding limits". Under the Mainland practice, for a building with a structural form exceeding limits, it should be presented to an official specialist panel for review and direction on the implementation of appropriate seismic-resistant measures, and the building design submission to the specialist panel should comply with the latest Design Checklist for Buildings Exceeding Limits (first promulgated by the related Mainland authority in 1997). On 5 September 2006, a revised Design Checklist was issued (2006 Design Checklist), which was however not incorporated into PRC 2001 Code.

3.21 On 29 September 2006, the Government invited tenders for the Tamar Development Project. As stated in the tender document:

> (a) the design and construction of structural elements should comply with the requirements of the seismic design standard of PRC 2001 Code; and
>
> (b) if some building structures were not covered by PRC 2001 Code, the contractor should follow other internationally recognised codes or alternative approaches as approved by the ArchSD.

3.22 In January 2008, Contractor A was awarded the contract. In May 2008, the ArchSD employed a consultant (Seismic Consultant) to review the seismic-resistant measures submitted by Contractor A. In September 2008, the Seismic Consultant advised that:

(a) all four building blocks of the CGC and the LCC should be "structures exceeding limits", i.e. they were structures falling outside the specifications of PRC 2001 Code; and

(b) the design requirements specified in the 2006 Design Checklist (see para. 3.20) should be adopted.

3.23 In August 2010, Contractor A informed the ArchSD that at the time of tender submission, he considered that all four building blocks of the CGC and the LCC were structures within the design limits of PRC 2001 Code, and that he had made financial provisions in his tender on such a basis. In view of the ArchSD's requirement that all the four building blocks should be regarded as "structures exceeding limits" for seismic-building works purposes, Contractor A claimed that he needed to incur additional expenditure on steel reinforcement, concrete and formwork, and the additional requirements had also caused a delay and disruption to the works progress. In November 2010, Contractor A submitted a claim for the additional expenditure relating to implementation of additional seismic-resistant measures.

3.24 In December 2010, after seeking advice of the Legal Advisory Division of the DEVB, the ArchSD sought approval from the FSTB for conducting negotiation with Contractor A to settle his claim for costs arising from implementation of additional seismic-resistant measures at a ceiling cost of $150 million. According to the ArchSD:

> (a) the 2006 Design Checklist which involved clarification on additional requirement had not been specified in the tender document; and
>
> (b) Contractor A was entitled to an additional payment if extra expenses had been incurred due to ambiguity or discrepancy not anticipated at the time of tender.

3.25 In July 2011, after approval by the FSTB, Contractor A and the ArchSD entered into a supplementary agreement (SA3 — see para. 3.4(c)), under which a sum of $150 million (Note 20) was payable to Contractor A for settling his claim on the issue.

Note 20: *According to the ArchSD, the sum included $24 million of additional costs relating to works acceleration and disruption, additional labour, plant and resources and overtime work for the purpose of meeting the original project commissioning time of May 2011.*

Areas for improvement

2006 Design Checklist not stated in tender document

3.26 The Tamar Development Project was the first Government project which adopted seismic-resistant measures for building structures, and the Government had no previous experience on adopting such measures in Hong Kong. Audit notes that the 2006 Design Checklist (see para. 3.20) was issued on 5 September 2006, 24 days before the tender invitation date of 29 September 2006. According to the ArchSD, pertinent buildings on the Mainland had been required to comply with the 2006 Design Checklist since its promulgation in September 2006. However, the 2006 Design Checklist was not included in the tender document issued on 29 September 2006. In the event, Contractor A was successful in making a financial claim on the grounds that compliance with the 2006 Design Checklist involved additional design requirements which had not been anticipated in the tender process (see para. 3.24(b)).

3.27 In September 2013, the ArchSD informed Audit that, under the design-and-build contract arrangement, even if the 2006 Design Checklist was included in the tender document, contractual claim might still arise due to different interpretation or clarification on the design requirements. In Audit's view, in administering a similar works contract in future, it is desirable for the ArchSD to include in the tender document all standards or guidelines which would affect the works requirements. In the event that new standards or guidelines are published between the time of inviting tenders and the tender closing time, the ArchSD needs to issue a tender addendum for the purpose.

Problem of "structures exceeding limits" under the design-and-build contract

3.28 According to the ArchSD's Seismic Consultant, all the four building blocks of the CGC and the LCC were structures exceeding limits (see para. 3.22(a)). However, Contractor A claimed that at the time of the tender submission, he considered that all four building blocks were structures within the design limits of PRC 2001 Code, and he successfully made a financial claim on the grounds of the contract ambiguity. Under the design-and-build contract arrangement, the building design of Contract A was not known at the time of

preparing the tender document. Therefore, the ArchSD was unable to determine whether any of the building structures in Contract A should be classified as structures exceeding limits for the purpose of implementing additional seismic-resistant measures. For similar cases in future, while the 2006 Design Checklist provides guidance on the design of structures exceeding limits, a design-and-build contractor may still make contractual claims over differences in views on whether a building structure should be a structure exceeding limits. This is because the contractor may claim that, according to his interpretation, some building structures are not structures exceeding limits, but the ArchSD may have a different interpretation (see para. 3.27). Therefore, the ArchSD needs to take into account this factor in considering the adoption of a design-and-build contract for buildings adopting seismic-resistant designs in the future.

Local seismic-resistant building design standards not yet developed

3.29 In December 2007, the BD completed a consultancy study on seismic effects (see Note 16 to para. 3.17) with an objective of assessing earthquake risks in Hong Kong and the effects of earthquakes on local buildings. The study recommended the development of seismic-design standards for adoption in Hong Kong.

3.30 In June 2012, the DEVB informed the LegCo Panel on Development that:

(a) since the specific ground motions, building designs, construction standards and practices of different localities were different, it would not be appropriate for Hong Kong to simply follow the seismic-resistant design requirements of other countries or territories;

(b) a tailor-made code, taking into account the relevant international standards and Hong Kong's geology, topography and construction practices, should be formulated if statutory seismic-resistant building design standards were to be introduced locally;

(c) the Government would make reference to standards adopted by the Mainland, the United States of America and other cities in devising Hong Kong's seismic-resistant design requirements. In line with international practices, consideration would be given to imposing more stringent requirements for special buildings having a post-earthquake recovery role, including government buildings; and

(d) the Government aimed to consult stakeholders, including the building professional institutions, building contractor associations, developers' association, local academics of relevant fields and LegCo, on the issue.

3.31 As of August 2013, local seismic-resistant building design standards had not been developed in Hong Kong. In September 2013, the BD informed Audit that:

(a) prior to the availability of the local seismic-resistant building design standards, building projects might make reference to the Mainland or any other international standards for enhancing the seismic-resistant capability of buildings, such as the adoption of the Mainland standards in the Tamar Development Project (see para. 3.21);

(b) the contract claim in paragraphs 3.23 to 3.25 was the result of contractual disputes rather than the lack of local seismic-resistant building design standards. Such local standards, when available, might not help avoid such contractual disputes;

(c) the introduction of new seismic-resistant design standards for buildings in Hong Kong would not only affect the building professionals but also the interest of members of the public. Therefore, such action needed the support of the stakeholders and the general public at large. In this connection, the BD had recently conducted a consultation with the stakeholders of the building industry and members of the general public; and

(d) the BD planned to commission a consultancy to formulate a tailor-made code of practice on seismic-resistant building design standards for Hong Kong by taking into account relevant international standards, local construction practices and geological conditions of Hong Kong. Amendment of the building law would be required if the new design standards were introduced as mandatory requirements. The whole process took time and the BD would comply with the necessary consultation and legislative procedures.

3.32 In Audit's view, the development of such standards will help enhance the safety standards of buildings and provide local standards for inclusion in pertinent works contracts. Therefore, in developing the local seismic-resistant building design standards, the BD needs to consult the ArchSD on its experience in the design and implementation of the seismic-resistant building works of the Tamar Development Project.

Audit recommendations

3.33 **Audit has *recommended* that, in implementing a building project involving the adoption of seismic-resistant designs in future, the Director of Architectural Services should:**

(a) **include in the tender document all standards or guidelines which would affect the works requirements;**

(b) **in the event that the standards or guidelines in (a) above are published between the time of inviting tenders and the tender closing time, issue a tender addendum for the purpose; and**

(c) **in considering the adoption of a design-and-build contract for the project, take into account potential disputes and contractual claims arising from differences in interpretation over structures exceeding limits.**

3.34 **Audit has also *recommended* that the Director of Buildings should, in developing the local seismic-resistant building design standards, consult the Director of Architectural Services on the experience in the design and implementation of the seismic-resistant building works of the Tamar Development Project.**

Response from the Administration

3.35 The Director of Architectural Services agrees with the audit recommendations in paragraph 3.33. He has said that the ArchSD will closely keep in view the latest development in local seismic-resistant building design standards when deciding the procurement method and tender specifications for future building projects.

3.36 The Director of Buildings agrees with the audit recommendation in paragraph 3.34.

PART 4: CHANGES OF CONTRACT REQUIREMENTS

4.1 This PART examines the changes of contract requirements after contract award of the Project, focusing on:

(a) change of accommodation requirements (paras. 4.2 to 4.29); and

(b) additional environmental and energy-efficiency measures (paras. 4.30 to 4.48).

Change of accommodation requirements

Space requirements in 2006

4.2 In May 2006, the Property Vetting Committee approved the accommodation requirements of the CGC and the LCC. According to the funding paper submitted to the FC in May 2006:

CGC

(a) the estimated Net Operating Floor Area (NOFA — Note 21) requirement of the CGC was 56,670 m^2 (3% larger than that of the replacement offices, mainly in the former CGO and Murray Building, of 54,860 m^2). Taking account of a 10% increase of NOFA for meeting the long-term requirements of the Government Secretariat, the total NOFA provided for was 62,340 m^2 (see Appendix D);

(b) about 3,270 staff would be accommodated at the CGC. As the various central offices and policy bureaux had over 8,000 staff, over 5,000 staff would remain working in offices outside the CGC;

Note 21: *NOFA is the floor area actually allocated to users. It does not include areas of toilets, bathrooms, lift lobbies, stair halls, public corridors and mechanical plant rooms.*

LCC

(c) the LegCo Building, the nearby commercial buildings (namely Citibank Tower and Prince's Building) and CGO West Wing with a total NOFA of 9,410 m^2 were accommodating the 60 LegCo Members and around 330 LegCo staff;

(d) the new LCC would provide an NOFA of 16,090 m^2, which would be 6,680 m^2 (71%) larger than that of the replacement offices (see Table 4). The area would accommodate 60 LegCo Members and around 360 LegCo staff (including a forecast of 26 additional staff); and

(e) the LegCo Chamber would be designed to accommodate 120 LegCo Members since it was technically not easily expandable at a later stage. Additional foundation works of LCC buildings would be carried out to allow for future building expansion with an additional 9,200 m^2 of NOFA for accommodating 60 additional LegCo Members. The planned expansion was to be implemented under four phases, with each phase accommodating 15 Members.

Table 4

Projected accommodation in LCC
(May 2006)

Office/facility	NOFA in former LegCo buildings (m^2)	Projected NOFA in LCC (m^2)
LegCo Members' offices and facilities	2,820	4,160
Staff offices	3,050	3,640
Meeting facilities (including the Chamber)	820	3,650
Ancillary facilities	2,720	4,640
Total	9,410	16,090

Source: Records of Administration Wing and LegCo

Additional LegCo space requirement in 2009

4.3 In January 2009, the LegCo Secretariat informed the Administration Wing that an additional NOFA of 1,260 m^2 was needed to be provided in the LCC to meet additional areas for a constitutional library, LegCo archives, a sign language interpreter studio and additional LegCo staff.

4.4 In February 2009, the LegCo Secretariat informed the Administration Wing that one of the following four options would help address the additional LegCo space requirements:

- ***Option A.*** Carrying out the expansion works at the LCC after a decision to increase the number of LegCo Members;
- ***Option B.*** Carrying out the expansion works at the LCC under the existing design-and-build contract, with expansion works to be completed at the same time of the original works;
- ***Option C.*** Carrying out the expansion works at the LCC under the existing design-and-build contract, with expansion works to be completed as soon as practicable; and
- ***Option D.*** Carrying out the expansion works at the LCC under a new contract commencing after the handover of the new LCC in May 2011.

4.5 In March 2009, the Administration Wing informed the LegCo Secretariat that:

(a) the Schedule of Accommodation for the LCC had been agreed with the LegCo Commission (Note 22) before tendering of Contract A in September 2006;

(b) pending a decision on the future constitutional development, there were neither justifications nor funding to support a revision of the scope of the Project; and

(c) changing the scope of the Project in the midst of the works would require the issuance of variation orders, the cost of which would escalate in a late construction stage, and give rise to possible claims by the contractor for any possible delay that might result. It might also cause serious disruption to the entire construction programme.

4.6 In the same month, the LegCo Commission requested the Administration to give further consideration to its request for additional space for the LCC under the current design-and-build contract (i.e. Options B or C in para. 4.4).

4.7 In April 2009, the ArchSD approached Contractor A and asked him to provide an estimate of the costs of providing an additional floor on LCC High Block and some areas on LCC Low Block within the existing works programme on the basis that the works would not affect the original completion date of the whole Project (i.e. Option B). Contractor A estimated that the design and construction of the additional works would cost about $113 million. In May 2009, the Administration informed the LegCo Commission that it agreed with the implementation of Option B.

4.8 In July 2009, Contractor A submitted an application to the Town Planning Board for implementing full expansion of LCC (see para. 4.2(e)). The full expansion would include the addition of five floors above LCC High Block, and constructing 11 building floors on the Podium of LCC High Block. In September 2009, the Board approved the application.

Note 22: *The LegCo Commission is chaired by the President of LegCo and consists of up to 13 LegCo Members including the Chairman.*

Changes of contract requirements

4.9 In October 2009, the Administration informed the Panel on Development of a proposed additional funding application for additional space for the LCC and some other expenditure items. In December 2009, the Administration sought funding approval of $359.8 million (including $113 million for providing additional floor areas for the LCC) from the FC. According to the papers submitted to the Panel on Development and the FC, the total additional NOFA in the LCC was 1,415 m^2 (see Table 5).

Table 5

Additional area for LCC
(October 2009)

Facility	NOFA (m^2)
Communal facility	
(a) expansion of the existing LegCo library with a constitutional library	220
(b) establishment of additional LegCo archives	140
(c) a studio for use by sign language interpreters for proceedings of LegCo	50
(d) an extra photographers' room	53
Secretariat office	
(e) additional office space to cater for staff increase (Note)	952
Total	1,415

Source: Records of Administration Wing and LegCo

Note: The LegCo Secretariat estimated that, upon commissioning of the LCC, 134 additional staff would be required to cope with provision of new services, compared with the original estimate of 26 additional staff in 2006 (see para. 4.2(d)).

4.10 In December 2009, the FC approved the additional funding application. In April 2010, the ArchSD and Contractor A entered into a supplementary agreement (SA1) for executing the additional works (see para. 3.4(a)).

4.11 In June 2010, LegCo passed a motion to increase the number of LegCo Members from 60 to 70 from October 2012 (Note 23). In November 2010, the LegCo Commission decided that the offices of the 10 new LegCo Members should be provided in the LCC and some LegCo Secretarial staff would be relocated to offices outside the LCC. In the same month, the ArchSD issued a variation order for changing the office layout to provide additional offices for LegCo Members. The final cost of the variation order was $15.4 million. According to the ArchSD, the sum included $9 million of additional costs relating to works acceleration and disruption, additional site safety measures, extra plant and material, and overtime work.

Areas for improvement

No expansion factor for LCC

4.12 In February 2000, the LegCo Commission requested the Government to identify a possible site in a centrally located area for the construction of a purpose-built building to meet the long-term accommodation requirements of LegCo. The LegCo Commission estimated that the number of LegCo Members would increase to 120 around 2030 to 2040, based on the population-wide representation ratio of 80,000 to 100,000 citizens per LegCo Member. The LegCo Commission also proposed that the new accommodation should be in the form of a complex comprising a number of buildings to be developed by phases.

Note 23: *In August 2010, the Standing Committee of the National People's Congress approved the method of forming LegCo from October 2012.*

4.13 In September 2006, after agreeing with the LegCo Commission on the area requirements of the LCC, the ArchSD incorporated into the tender document such area requirements (see para. 4.5(a)). As shown in Appendix D, for the CGC, a 10% expansion factor had been built into the area requirement. However, this expansion factor was not provided for the area requirement of the LCC (see Table 4 in para. 4.2). In Audit's view, this expansion factor should have been incorporated into the area requirement of the LCC.

4.14 Audit considers that, in assessing the accommodation requirements of new buildings in future, pertinent B/Ds need to provide an appropriate expansion factor for space requirements if there is the likelihood of an increase in space requirements in the near future.

Additional area requirements made only after contract award

4.15 In April 2010 (Contract A was awarded in January 2008), at the request of the LegCo Commission, the ArchSD and Contractor A entered into SA1, under which, among other things, additional NOFA of 1,415 m^2 for the LCC would be constructed. The total cost of constructing this additional NOFA was $113 million, which included $36 million of costs relating to works acceleration and disruption, and additional design fee. This was because the additional works had to be incorporated into the construction schedule while maintaining the original project completion date.

4.16 According to ETWB Technical Circular (Works) No. 30/2003 on Control of Client-initiated Changes for Capital Works Projects, changes in user requirements can be disruptive to the overall programme of projects, and often result in abortive work and additional costs. As stated in the Circular, in order to expedite the delivery of projects, concerted effort should be made to contain the need for changes to user requirements to those that are absolutely essential and necessary. In Audit's view, had the additional NOFA requirement of 1,415 m^2 in the LCC (see para. 4.15) been included in the original tender document, the additional $36 million of acceleration and disruption costs and additional design fee might have been saved or reduced. Therefore, in administering a works project in future, project proponents need to take measures to ensure that all works requirements are incorporated into the tender document as far as possible, and avoid making changes to works requirements after contract award.

Future expansion of LCC by phases

4.17 According to the planned office accommodation in 2006, the LegCo Secretariat would have about 360 staff upon the commissioning of the LCC (see para. 4.2(d)). As of March 2013, the LegCo Secretariat had 523 staff, of whom 431 were accommodated at the LCC, and the remaining 92 at Murray Road Multi-storey Carpark Building (occupying an area of 2,300 m^2).

4.18 As stated in paragraph 4.2(e), the foundation works of the LCC were designed to support construction of an additional area of 9,200 m^2 in future, and the Town Planning Board has given approval for the expansion works (see para. 4.8). Of the future expansion area of 9,200 m^2, 1,415 m^2 (see para. 4.9) have been used for building an additional floor on LCC High Block and additional floor areas on the LCC Low Block and 181 m^2 for building a new extension of the CITIC Tower footbridge leading to the LCC (Note 24). The area of expansion for the LCC that remains is 7,604 m^2 (9,200 m^2 less 1,415 m^2 less 181 m^2).

4.19 In May 2006, the Administration informed the FC that the expansion of LCC was planned to be implemented under four phases (see para. 4.2(e)). In Audit's view, in implementing works for LCC expansion in future, the remaining area of expansion of 7,604 m^2 should preferably be provided in one phase of works. This arrangement would minimise disruption to LegCo Members and Secretariat staff and achieve cost saving. Any surplus office space in the earlier years after works completion could be gainfully deployed for other uses (e.g. to be allocated on a short-term basis to appropriate B/Ds).

Allocation of surplus CGC floor area

4.20 The Administration Wing allocated floor areas of the CGC to B/Os based on the Schedule of Accommodation approved by the Property Vetting Committee. Audit examination revealed that the as-built floor area of the CGC was 63,240 m^2, which was 900 m^2 larger than the planned area (see Table 6). However, Audit notes

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Note 24: *In June 2013, the FC approved funding of $74.3 million for the extension of the CITIC Tower footbridge leading to the LCC. According to the ArchSD, the new footbridge extension would take up portion of the LegCo future expansion area of about 181 m^2.*

that the Administration Wing has fully allocated the as-built floor areas to various B/Os.

Table 6

Planned and as-built floor area of CGC and LCC

Office	Planned NOFA stated in FC paper (a) (m^2)	As-built NOFA (b) (m^2)	Difference (c) = (b) − (a) (m^2)
CGC	62,340	63,240	900
LCC	17,505	17,528	23
Total	79,845	80,768	923

Source: ArchSD records

4.21 In September 2013, the Administration Wing informed Audit that the surplus areas of 900 m^2 in the CGC were scattered among different floors and had been allocated to various B/Os. In Audit's view, the Administration Wing needs to take into account these surplus areas when allocating additional office space to the pertinent B/Os in future.

Audit recommendations

4.22 **Audit has *recommended* that the Secretary for Financial Services and the Treasury should remind pertinent B/Ds of the need to, in assessing the accommodation requirements of new buildings, provide an appropriate expansion factor for space requirements if there is the likelihood of an increase in space requirements in the near future.**

4.23 **Audit has also *recommended* that the Secretary for Development should remind project proponents of the need to, in administering a works project in future, incorporate all works requirements into the tender document as far as possible, and avoid making changes to works requirements after contract award.**

4.24 **Audit has also *recommended* that, in implementing works for LCC expansion in future, the Director of Administration and the Secretary General of the Legislative Council Secretariat should:**

(a) **consider providing the remaining area of expansion in one phase of works; and**

(b) **allocate any surplus area on a short-term basis to appropriate B/Ds.**

4.25 **Audit has also *recommended* that the Director of Administration should take into account the surplus areas allocated to pertinent B/Os in the CGC when allocating additional office space to them in future.**

Response from the Administration and the Legislative Council Secretariat

4.26 The Secretary for Financial Services and the Treasury agrees with the audit recommendation in paragraph 4.22. He has said that:

(a) in assessing the Schedules of Accommodation proposed by B/Ds, the Government Property Agency and Property Vetting Committee always check with the B/Ds concerned whether the latter have included their expansion needs in their accommodation proposals;

(b) individual B/Ds have different space requirements, particularly for departmental specialist accommodation. Requests for expansion of space requirements are therefore considered on a case-by-case basis; and

(c) the Government Property Agency and Property Vetting Committee will support a request for an additional space requirement if it is fully justified.

4.27 The Secretary for Development agrees with the audit recommendation in paragraph 4.23. He has said that the DEVB will re-circulate ETWB Technical Circular (Works) No. 30/2003 (see para. 4.16) to relevant B/Ds to remind them of the related requirements.

4.28 The Director of Administration agrees with the audit recommendations in paragraphs 4.24 and 4.25. She has said that:

(a) the Administration Wing will work closely with the LegCo Secretariat and duly take into account all relevant considerations when pursuing any plan for LCC expansion to meet the accommodation requirements of LegCo in future;

(b) when the Administration Wing invited B/Os to bid for unallocated expansion area at Tamar to meet their evolving operational requirements in November 2010, the as-built NOFA details were not available as the CGC was under construction; and

(c) the Administration Wing will duly take into account the surplus areas already allocated to pertinent B/Os in the CGC when allocating additional office space to them in future.

4.29 The Secretary General of the Legislative Council Secretariat agrees with the audit recommendations in paragraph 4.24.

Additional environmental and energy-efficiency measures

4.30 According to ETWB Technical Circular (Works) No. 16/2005 on "Adoption of Energy Efficient Features and Renewable Energy Technologies in Government Projects and Installations" issued in November 2005 (ETWB 2005 Circular):

(a) energy-efficient features (e.g. environmental building and lighting design) should be incorporated into the building design as far as practicable; and

(b) renewable-energy technologies (e.g. solar water heating and photovoltaic technologies) should be incorporated so far as reasonably practicable into a works project wherever the project satisfies the prescribed criteria (Note 25).

4.31 In January 2008, in a press release announcing the award of Contract A, the Government indicated that Tamar Complex would be one of the Government's "greenest" complexes when completed.

4.32 In April 2009, the DEVB and the Environment Bureau (ENB) issued a joint circular on "Green Government Buildings" (Joint Circular). According to the Joint Circular:

(a) the maximum payback period (Note 26) of energy-efficiency measures would normally be capped at nine years, unless full justifications are provided by the relevant B/Ds;

Note 25: *For example, the criteria include adopting solar water heating for premises installed with centralised hot water supply systems and installing photovoltaic panels for works projects involving open space greater than 1,000 m^2.*

Note 26: *The payback period of an energy-efficiency measure is determined by dividing the cost of the capital investment by the estimated annual energy saving generated. It represents the estimated time (in years) required to recover the capital investment through energy saving.*

(b) renewable-energy technologies should be incorporated in all new government buildings as far as reasonably practicable; and

(c) the total additional costs involved in renewable-energy technologies, waste reduction and management, water management and indoor air quality would be capped at 2% of the total project cost, unless full justifications are provided by the relevant B/Ds.

4.33 Under Contract A, 21 items of energy-efficiency equipment at a total capital cost of $24.7 million (Original Installations — see Table 7) were provided. In April 2010, after seeking the FC's funding approval (see para. 3.2), the ArchSD and Contractor A entered into SA1, under which $70.9 million was provided for additional environmental and energy-efficiency measures (see para. 3.4(a)). In addition, the ArchSD also incurred $13.3 million (funded by the project vote of the Tamar Development Project) for procurement of such measures. Therefore, the total cost of the additional measures (Additional Installations) was $84.2 million. The Additional Installations comprised 5 items of energy-efficiency equipment, 4 items of equipment using renewable-energy technologies and 2 items of environmental-conservation equipment. The ArchSD has made estimates of the annual energy saving of the energy-efficiency equipment and the equipment using renewable-energy technologies. Based on the capital cost and estimated annual energy saving of each item of the energy-efficiency equipment, Audit has made estimates of the payback periods of the 21 items of Original Installations and the 5 items of Additional Installations (see Table 7 and Appendix E).

Table 7

Environmental and energy-efficiency equipment

Equipment	Capital cost (a) ($'000)	Estimated annual energy saving (b) ($'000)	Average payback period (c) = (a) ÷ (b) (years)
1. Original Installations			
21 items of energy-efficiency equipment	24,695 → 93,295	11,668 → 13,246	2.1 → **7.0**
2. Additional Installations			
(a) 5 items of energy-efficiency equipment	68,600	1,578	43.5
(b) 4 items of equipment using renewable-energy technologies	12,100 → 84,200	29	N/A (Note 1)
(c) 2 items of environmental-conservation equipment	3,500	N/A (Note 2)	N/A (Note 2)

Source: *Audit analysis of ArchSD records*

Note 1: *According to the ArchSD, payback-period analyses are not applicable to these items.*

Note 2: *According to the ArchSD, estimated annual energy savings and payback periods are not applicable to these items.*

4.34 When seeking additional funding for the Additional Installations in December 2009, the ArchSD informed the FC that:

(a) the ArchSD had critically reviewed the feasibility of incorporating more new environmental features in the Tamar Development Project so that it remained the paragon of a green government building at the time of its commissioning. In considering further environmental features for the Project, it might be necessary to look beyond cost-benefits and consider the intangible long-term benefits that would be brought to the environment;

(b) the additional energy-efficiency features would achieve an additional 3.6% energy savings in the annual energy consumption and had a payback period of about 44 years (see item 2(a) of Table 7 in para. 4.33). Together with the energy-conservation measures already incorporated into the Tamar Development Project, the energy-efficiency features would achieve 26% energy savings in the annual energy consumption when compared to a normal office and had a payback period of about eight years;

(c) some of the new environmental technologies were only used commercially in a limited scale. Together with various cost-implication factors (e.g. adjustment of works programme and impacts on construction sequences), these technologies were higher in cost and might have very long payback periods; and

(d) adopting the new energy-conservation measures would demonstrate the Government's willingness to promote and try out new technologies for protecting the environment.

Areas for improvement

Long payback periods of some items of energy-efficiency equipment

4.35 As shown in items (B)(1) to (4) of Appendix E, the payback periods of 4 of the 5 items of additional energy-efficiency equipment exceeded the normal maximum payback period of nine years. In particular, the payback periods of the following items were long:

(a) 87.3 years for using Light-Emitting Diode (LED) lighting costing $30.8 million;

(b) 40.6 years for installing occupancy sensors for lighting costing $26 million; and

(c) 176.5 years for installing dimming control for footbridge lighting costing $300,000.

4.36 In September 2013, the ArchSD informed Audit that, although some items of energy-efficiency equipment had a payback period exceeding the normal maximum of nine years as stipulated in the Joint Circular (see para. 4.32(a)), the overall payback period of all items of the energy-efficiency equipment under the Original and Additional Installations was seven years (see Table 7 in para. 4.33), and it had obtained the agreement of the DEVB and the ENB on this issue.

4.37 In Audit's view, with a view to achieving value for money, the ArchSD needs to take measures to ensure that the payback periods of individual items of energy-efficiency equipment to be procured in future should be capped at nine years as far as possible.

Inadequate promotion of energy-conservation equipment installed at Tamar Complex

4.38 As shown in items (B)(6) to (9) of Appendix E, the ArchSD incurred a capital cost of $12.1 million for installing 4 items of equipment using renewable-energy technologies, which would achieve an annual energy saving of $28,600 (0.2% of capital cost). For example:

(a) a capital cost of $7.7 million was incurred for installing a solar hot water system which would achieve an annual energy saving of $18,900 (0.2% of capital cost — Note 27);

Note 27: *In 2009, the ENB informed the Administration Wing that the annual energy saving of a typical solar hot water system should be about 10% of the related capital cost.*

(b) a capital cost of $2.4 million was incurred for installing thin-film photovoltaic panels which would achieve an annual energy saving of $5,100 (0.2% of capital cost); and

(c) a capital cost of $1.2 million was incurred for installing photovoltaic external lighting for open space which would achieve an annual energy saving of $1,900 (0.2% of capital cost).

4.39 Audit notes that:

(a) the ETWB 2005 Circular stipulates that renewable-energy technologies should be incorporated so far as reasonably practicable into a works project wherever the project satisfies the prescribed criteria (see para. 4.30(b)); and

(b) the Joint Circular stipulates that renewable-energy technologies should be incorporated in all new government buildings as far as reasonably practicable, and imposes a cost ceiling on environmental measures adopting renewable-energy technologies (see para. 4.32(b) and (c)).

4.40 In September 2013, the ENB informed Audit that:

(a) it was conducting a review of ETWB 2005 Circular (see para. 4.30) and the Joint Circular (see para. 4.32) to identify room for further enhancing the environmental and energy efficiency performance of government buildings. The review was targeted for completion by end 2013; and

(b) during the review, the ENB would explore the feasibility of developing more detailed guidelines on the adoption of renewable-energy technologies.

4.41 Audit also notes that one of the objectives of adopting new energy-conservation measures in the Tamar Development Project was to demonstrate the Government's willingness to promote and try out new technologies

for protecting the environment (see para. 4.34(d)). Audit however notes that the ArchSD has not conducted promotion of the use of energy-conservation equipment installed at Tamar Complex. The ArchSD needs to conduct promotion of such equipment.

Higher-than-estimated electricity consumption

4.42 In 2009, the ArchSD made estimates of the electricity consumption of the CGC and the LCC. Audit notes that, after implementation of various environmental and energy-efficiency measures (see para. 4.33), the actual electricity consumption of the CGC and the LCC in 2012-13 was 4% and 53% respectively higher than the estimated one (see Table 8).

Table 8

Estimated and actual electricity consumption

Complex	Estimated annual consumption (a) (kilowatt-hour — kWh)	Actual consumption in 2012-13 (b) (kWh)	Variance (c) = (b) − (a) (kWh)
CGC	29,977,240	31,322,173	+1,344,933 (+4%)
LCC	7,520,865	11,538,423	+4,017,558 (+53%)
Overall	37,498,105	42,860,596	+5,362,491 (+14%)

Source: ArchSD records

Changes of contract requirements

4.43 In September and October 2013, the ArchSD and the LegCo Secretariat informed Audit that:

ArchSD

(a) the increase in electricity consumption could be attributed to a number of factors, including the actual building operating hours and utilisation rates of facilities. For the LCC, the actual operating hours of some facilities had far exceeded the anticipated building operation schedule compiled during the design stage;

(b) the ArchSD had been closely monitoring the electricity consumption since building occupation and providing advice to the building users on the implementation of various energy-saving measures;

(c) there was improvement in the actual electricity consumption for the one-year period ending August 2013, where the CGC recorded electricity consumption of 28,980,854 kWh, which was 3% lower than the estimated level, and the LCC recorded electricity consumption of 10,693,657 kWh, which was 42% higher than the estimated level;

LegCo Secretariat

(d) the LCC was a multi-purpose building which included venues for holding meetings of LegCo and its committees, offices of LegCo Members and the Secretariat staff, facilities for the press as well as education and visitor facilities for the public. Unlike general office buildings where the electricity consumption was comparatively stable, the electricity consumption in the LCC was very much affected by the number and duration of meetings and activities held;

(e) the LCC's electricity consumption estimate made in 2009 was based on the number and duration of meetings and activities held in the former LegCo Building at that time. However, since moving to the new LCC, there had been a substantial increase in the number and duration of meetings as well as system rectification and testing works after office hours and weekends, which were not foreseen when drawing up the electricity consumption estimate in 2009. With hindsight, the electricity consumption of the LCC was underestimated in 2009; and

(f) the LegCo Secretariat had taken various measures to reduce electricity consumption. In the period from January to August 2013, electricity consumption of the LCC had decreased by 15% as compared to that in the same period in 2012.

4.44 In Audit's view, the ArchSD, in collaboration with the Administration Wing and LegCo Secretariat, needs to take appropriate measures with a view to reducing electricity consumption of Tamar Complex.

Audit recommendations

4.45 **Audit has *recommended* that the Director of Architectural Services should:**

(a) **in administering a works project in future, take measures to ensure that the payback periods of individual items of energy-efficiency equipment are capped at nine years as far as possible;**

(b) **conduct promotion of the environmental and energy-efficiency equipment at Tamar Complex; and**

(c) **in collaboration with the Director of Administration and the Secretary General of the Legislative Council Secretariat, take appropriate measures with a view to reducing electricity consumption of Tamar Complex.**

Response from the Administration and the Legislative Council Secretariat

4.46 The Director of Architectural Services agrees with the audit recommendations. He has said that the ArchSD will:

(a) comply with the guidelines and circulars issued by the DEVB and the ENB on the payback period of the energy-efficient installations;

(b) promote the use of environmental and energy-efficiency equipment installed at Tamar Complex; and

(c) work closely with the Administration Wing and the LegCo Secretariat with a view to further reducing electricity consumption of Tamar Complex.

4.47 The Director of Administration agrees with the audit recommendation in paragraph 4.45(c). She has said that:

(a) in recognition of the need for energy conservation, the Administration Wing has closely monitored the level of electricity consumption and has implemented various energy-saving initiatives in the CGC; and

(b) the Administration Wing will further collaborate with the ArchSD to take appropriate measures with a view to reducing electricity consumption of Tamar Complex.

4.48 The Secretary General of the Legislative Council Secretariat agrees with the audit recommendation in paragraph 4.45(c). He has said that the LegCo Secretariat will continue to explore and implement additional measures to reduce electricity consumption of the LCC.

PART 5: TAMAR COMPLEX COMMISSIONING

5.1 This PART examines the commissioning of Tamar Complex, focusing on:

(a) rectification of defects and completion of outstanding works (paras. 5.2 to 5.14); and

(b) sterilisation of fresh-water-supply system (paras. 5.15 to 5.28).

Defects and outstanding works

5.2 Under Contract A:

(a) the maintenance period was 12 months from the date of substantial completion of the contract works;

(b) Contractor A should carry out any outstanding work as soon as practicable and in any event before the expiry of the maintenance period;

(c) all maintenance work should be carried out by Contractor A during the maintenance period or within 14 days after its expiry. The ArchSD might also require Contractor A to carry out maintenance work including any work of repair or rectification, or make good any defect or other fault identified within the maintenance period, and Contractor A should carry out such work within the maintenance period or as soon as practicable thereafter;

(d) all such outstanding and defect rectification works should be carried out by Contractor A at his own expense;

(e) if Contractor A failed to carry out any outstanding work and/or defect rectification work, the Government should be entitled, after giving a reasonable notice in writing to Contractor A, to have such work carried out by its own workers or by other contractors, and the Government should be entitled to recover from Contractor A the expenditure incurred in connection therewith; and

(f) upon the expiry of the maintenance period and when all outstanding work and all work of repair, rectification and making good any defect and other fault identified in the maintenance period have been completed, the ArchSD should issue a maintenance certificate to Contractor A.

5.3 The maintenance periods of the seven Works Sections had expired during May 2012 to September 2012 (see Table 9).

Table 9

Maintenance period expiry dates

Works Section	Particular	Substantial completion date	Maintenance period expiry date
VI	Footbridge B	17 May 2011	17 May 2012
I	Office Blocks of CGC	30 July 2011	30 July 2012
II	Low Block of CGC	30 July 2011	30 July 2012
III	High Block of LCC	30 July 2011	30 July 2012
IV	Low Block of LCC	30 July 2011	30 July 2012
V	Footbridge A	1 September 2011	1 September 2012
VII	Open Space and remaining works	1 September 2011	1 September 2012

Source: ArchSD records

Building handing over

5.4 Footbridges A and B, and open space were handed over to the ArchSD after substantial completion of works. For premises in the CGC and the LCC, they were handed over to the building users in the presence of ArchSD staff (and Administration Wing staff for the CGC) by phases from end of July to mid-December 2011.

Position as of November 2011

5.5 According to the ArchSD, it had conducted site inspections with building users around two weeks before actual handover of the completed premises. Based on the inspections, the site staff of ArchSD and the building users compiled lists of defects and outstanding works for follow-up actions by Contractor A. As of November 2011, when the overall building handover was near completion, a total of 118,324 items of defects and outstanding works had been identified, of which the works of 88,960 items (75.2%) had not been completed. According to the ArchSD, most of the outstanding works items had been completed before the actual handover of the related premises, although the ArchSD did not maintain such statistics.

Position in 2013

5.6 As of April 2013 (almost two years after substantial completion of works of the CGC and the LCC), further to the 118,324 items of defects and outstanding works identified (see para. 5.5), the ArchSD and users of Tamar Complex had identified additional 45,327 items of defects (totally 163,651 items), and 5,893 (3.6%) of the 163,651 items of defects and outstanding works (Note 28) had not been rectified. As of August 2013 (2 years after substantial completion of works of the CGC and the LCC), 2,755 items of defects had not been rectified, comprising 495 items which would be rectified by Contractor A and 2,260 items which would not be rectified by the Contractor. According to the ArchSD, regarding the 2,260 items of defects:

(a) they were minor in nature, such as scratch marks on building fixtures and finishes, and minor touching-up works required for installations located inside the false-ceiling space;

(b) after discussion with the users, it was agreed that the related rectification works would not be carried out so as to minimise disturbance to users; and

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Note 28: *Examples of defects included water leakage or seepage, defective or damaged electrical switches, defective or damaged walls and unsatisfactory workmanship on insulation of air-conditioning ductwork and pipeworks. According to the ArchSD, of the 163,651 items, 77,763 items were minor defects.*

(c) the ArchSD would conduct valuation of the omitted works in (b) above for the purpose of making appropriate deduction from the final contract payment to Contractor A.

5.7 Under Contract A, Contractor A was responsible for rectifying all defects identified during the maintenance period. Upon satisfactory rectification of all defects and completion of outstanding works, the ArchSD would issue a maintenance certificate to Contractor A. The following are examples of defects yet to be rectified as of August 2013:

- Water leakage and seepage problems after heavy rain.
- The solar hot water system for the CGC Office Blocks intended for use by the canteen operator was found defective. Up to August 2013, the system had not been handed over to the Administration Wing.
- Unstable Closed Circuit Television image problem and unsynchronised time recording of cameras.
- Some as-built drawings of building works and some operation and maintenance manuals were outstanding.

Areas for improvement

Defects and outstanding works not yet rectified and completed

5.8 In July 2012, before the expiry of the maintenance period for the CGC and the LCC, the ArchSD provided Contractor A with the final defect lists on outstanding works and defects. In September 2012, Contractor A undertook that he would complete the outstanding works and rectify the defects by end of November 2012. In Audit's view, it is unsatisfactory that 3.6% of the defects and outstanding works had not been rectified and completed as of April 2013 (see para. 5.6). Audit notes that the carrying out of defect rectification works and outstanding works after commissioning of the CGC and the LCC have caused disruption and nuisance to the building users. According to the ArchSD, it has received many complaints from the

building users over disruption caused by works being carried out during office hours, such as irritating smell resulting from painting works and unwanted fire alarm triggered by the works.

5.9 As of August 2013, rectification works for 2,755 items of defects (see para. 5.6) had not been completed and hence the ArchSD had not issued the maintenance certificate to Contractor A.

5.10 In September 2013, the ArchSD informed Audit that:

(a) the long time taken to rectify the outstanding defects was due to additional time required for arranging access to work, particularly in the LCC; and

(b) some works could only be carried out during non-office hours on weekdays, during weekends or long holidays. These included, for example, noisy works and works which would generate volatile organic compounds (such as painting and wall paper repairs), works at LegCo Members' Offices, Conference Hall and communal conference rooms in the LCC and the CGC.

5.11 In Audit's view, the ArchSD needs to strengthen its supervision of Contractor A's work on rectifying defects, such as asking him to deploy more labour resources to complete the defect rectification works as early as possible, and make arrangements to avoid unnecessary disruption and nuisance to the building users when carrying out the works. In the event that Contractor A could not complete the remaining defect rectification works in a timely manner, the ArchSD needs to consider carrying out the works by another contractor and recovering the related expenditure from Contractor A in accordance with Contract A (see para. 5.2(e)). In implementing a works project in future, the ArchSD also needs to take measures to ensure that all defects and outstanding works are rectified and completed respectively within the maintenance period or as soon as practicable thereafter.

Need to enhance monitoring of implementation of some works items

5.12 Audit notes that there is scope for improvement in monitoring contract quality of work. Cases 1 and 2 are examples.

Case 1

Defective drainage works

1. On 20 April 2012, a rainwater pipe burst occurred on the second floor of the CGC East Wing, causing water seepage at the ceiling of the Public Entrance lobby and Press Entrance lobby on the ground floor, and flooding to the lift lobbies of the first and second floors as well as the cafe at Tamar Park.

2. On 20 May 2012, another rainwater pipe burst took place on the first floor of CGC East Wing, with rainwater flowing down the staircase.

3. The ArchSD's investigation revealed that in both cases, the related rainwater pipes had not been adequately supported. As a result, when the pipes encountered high water flows during heavy rainfall, serious pipe movements led to pipe burst. According to the ArchSD, the pipe installations had been carried out in accordance with the suppliers' recommendations. They were subsequently reinforced with more firmly-fixed installations.

Audit comments

4. In implementing a works project in future, the ArchSD needs to strengthen its monitoring of a contractor's quality of work, such as those relating to the installation of rainwater pipes.

Source: ArchSD records

Case 2

Defective soft landscape works

1. According to the ArchSD, during a typhoon in July 2012 (Tropical Cyclone Warning Signal No. 10 was hoisted on 24 July 2012), 102 (25%) of the 410 trees planted in Tamar Complex were damaged (57 trees fell, 44 trees leaned and the branches of 1 tree broke).

2. As revealed by the joint inspections by the ArchSD and Contractor A conducted after the typhoon, the major cause of the tree damage was that the rectification work of some defects identified during the planting stage had not been satisfactorily completed. Examples included:

(a) wrapping materials had not been completely removed before tree planting. A fallen tree was found having wrapping materials (for protecting the tree root during transportation) not yet completely removed before tree planting. Similar irregularities were first identified by the ArchSD in September 2011 during the tree planting works and it had reminded Contractor A to take necessary rectification actions; and

(b) the quality of some plants was not satisfactory. The ArchSD had identified about 20 trees having cracks or bark peeling during the planting stage, and issued in September 2011 a letter to Contractor A asking for rectification actions.

Audit comments

3. In implementing a works project in future, the ArchSD needs to strengthen its monitoring of a contractor's quality of work, such as those relating to landscape works.

Source: ArchSD records

Audit recommendations

5.13 **Audit has *recommended* that the Director of Architectural Services should:**

(a) **regarding the outstanding defect rectification works at Tamar Complex:**

(i) **strengthen the ArchSD's supervision of Contractor A's work with a view to ensuring that all defects are rectified as early as possible;**

(ii) **make arrangements to avoid unnecessary disruption and nuisance caused to building users when carrying out the works; and**

(iii) **if Contractor A could not complete the works in a timely manner, consider carrying out the works by another contractor and recovering the related expenditure from Contractor A; and**

(b) **in implementing a works project in future:**

(i) **take measures to ensure that all defects and outstanding works are respectively rectified and completed within the maintenance period or as soon as practicable thereafter; and**

(ii) **strengthen the ArchSD's monitoring of a contractor's quality of work, in particular that relating to installation of rainwater pipes and landscape works.**

Response from the Administration

5.14 The Director of Architectural Services agrees with the audit recommendations. He has said that the ArchSD:

(a) will continue to closely monitor Contractor A's performance and closely coordinate with the Contractor, building management and users with a view to expediting the completion of the remaining defect rectification works. The ArchSD will take measures to minimise the disruption caused while carrying out the works. Contractor A will complete the remaining defects as soon as possible; and

(b) is mindful of Contractor A's quality of work and appreciates the need to complete all defects and outstanding works as soon as practicable. Based on the experience gained from the Tamar Development Project, the ArchSD has conducted experience-sharing sessions with staff for continuous development.

Sterilisation of fresh-water-supply system

5.15 According to Water Supplies Department (WSD) Circular Letter No. 6/2002 issued in August 2002 on Cleaning and Sterilisation of Fresh Water Mains of Inside Service issued to all licensed plumbers and Authorised Persons, newly installed fresh water mains of inside service should be cleaned and sterilised to the satisfaction of the Water Authority (Note 29) before they are put into operation. According to the WSD, the inside service of a building includes water pipes, water tanks and water-pumping systems (see para. 5.20(a)).

5.16 In May 2010, Contractor A commenced the installation works for the fresh-water-supply system of Tamar Complex. In July 2011, the CGC and the LCC were substantially completed, and users began to move into the buildings by phases. Fresh-water supply was provided to Tamar Complex at the same time.

Note 29: *According to the Waterworks Ordinance (Cap. 102), the Director of Water Supplies is the Water Authority.*

5.17 In December 2011, a senior government official working at the CGC contracted Legionnaires' Disease (Note 30). The Department of Health (DH)'s investigations identified Legionella bacteria (exceeding the action level adopted by the DH — Note 31) in the officer's private washroom (with shower facilities) and 16 other locations in the CGC, and two locations in the LCC.

5.18 According to the ArchSD's investigation report of January 2012, possible factors leading to the proliferation of Legionella bacteria in Tamar Complex included:

(a) low utilisation of some fresh-water-supply facilities, such as private washrooms of senior government officials;

(b) the existence of some unused water pipes (reserved for future connections) leading to pipe dead ends and accumulation of stagnant water inside the fresh-water-supply system; and

(c) hot water supply in the system (according to the DH, the optimum temperature for proliferation of Legionella bacteria is around 25°C to 40°C).

5.19 Subsequently, the ArchSD implemented the following measures:

(a) carrying out sterilisation of the whole fresh-water-supply system of Tamar Complex at a cost of $2.1 million;

(b) instructing Contractor A to dismantle all the water pipes reserved for future water connections; and

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Note 30: *Legionnaires' Disease is an acute pneumonic illness caused by human inhalation of airborne droplets contaminated with Legionella bacteria, which are commonly found in natural fresh water sources (e.g. rivers and ponds) and man-made water systems (e.g. hot and cold water supply systems).*

Note 31: *According to the DH, when the concentration of Legionella bacteria of a water source exceeds 100 colony forming units per litre of water, risk assessment and appropriate remedial actions are required to be carried out on the water source.*

(c) issuing a set of housekeeping guidelines in June 2012 making reference to the recommendations of the Prevention of Legionnaires' Disease Committee (Note 32) for proper use of the fresh-water-supply system for controlling Legionnaires' Disease at Tamar Complex.

5.20 In January 2012, the WSD informed the LegCo Panel on Development that:

(a) before connecting the newly installed inside service of a building (including water pipes, water tanks and water-pumping systems) to the public-water-supply network, a licensed plumber should clean and sterilise the inside service thoroughly so as to avoid contamination caused to the public water supply;

(b) one of the possible causes of the presence of Legionella bacteria in water samples taken from Tamar Complex was the phased occupation schedule of the new buildings, resulting in some of the water mains not being put into active use after the provision of water supply to the Complex;

(c) a test of Legionella bacteria in water samples was not required under the World Health Organization (Note 33) guidelines and there was no scientific basis in support of a direct correlation between Legionnaires' Disease and a specific level of concentration of Legionella bacteria in water samples; and

(d) the WSD would review the existing guidelines in consultation with the relevant trade associations to examine the need for necessary amplification, and would enhance public education on related subjects.

Note 32: *In 1985, the Government established the Committee to advise the Government on the minimisation of the risk of Legionnaires' Disease and on the promotion of good practices to building owners and associated practitioners for preventing the outbreak of Legionnaires' Disease. The Committee's recommendations issued in April 2012 on proper use of a fresh-water-supply system included:*

(a) infrequently-used water outlets should be fully flushed for a minimum of one minute at least once a week; and

(b) redundant pipework that might lead to stagnant water should be removed.

Note 33: *World Health Organization is the directing and coordinating authority for health in the United Nations.*

5.21 In August 2012, WSD Circular Letter No. 2/2012 on Cleaning and Disinfection of Fresh Water Inside Service was issued to all licensed plumbers and Authorised Persons. According to the Circular Letter:

(a) under Regulation 7 of Waterworks Regulations (Cap. 102A), a consumer or his agent shall be responsible for keeping an inside service clean; and

(b) to this end, the consumer or his agent shall clean and disinfect a newly installed fresh-water inside service before it is provided with water supply from the WSD.

5.22 In late 2012, the CGC and the LCC joined the WSD's Quality Water Recognition Scheme with a view to ensuring satisfactory quality of fresh-water supply to Tamar Complex.

Areas for improvement

Fresh-water-supply system not fully sterilised before use

5.23 In September 2013, the ArchSD informed Audit that:

(a) to ensure satisfactory water quality before commissioning of Tamar Complex:

(i) sterilisation of the newly installed fresh-water mains between water meters of Tamar Complex and public-water mains maintained by the WSD had been carried out by a licensed plumber in 2011 according to WSD Circular Letter No. 6/2002 (see para. 5.15);

(ii) of the 23 fresh-water tanks in Tamar Complex, cleaning and sterilisation of 8 potable water tanks had been carried out as an enhancement measure; and

(iii) laboratory testing had been conducted on water samples collected from 19 randomly selected points (Note 34); and

(b) since the issue of WSD Circular Letter No. 2/2012 in August 2012 (see para. 5.21), the ArchSD had adopted the practice of conducting disinfection of other parts of a newly installed fresh-water inside service.

5.24 In Audit's view, in order to reduce risks of water contamination by bacteria, the ArchSD needs to conduct disinfection of all water mains and components of the fresh-water-supply system of new Government buildings in accordance with WSD Circular Letter No. 2/2012 in future.

Low utilisation of some fresh-water-supply facilities

5.25 At the CGC, 35 private washrooms with showers facilities are provided for use by senior government officials. According to the ArchSD's investigation in January 2012 (based on information provided by the users), of these 35 private washrooms, 14 (40%) were infrequently used. In Audit's view, in order to reduce risks of water contamination by bacteria, the ArchSD, in collaboration with the Administration Wing, needs to devise strategies to address this issue.

Audit recommendations

5.26 **Audit has *recommended* that the Director of Architectural Services should:**

(a) **in implementing a building project in future, take measures to ensure that the fresh-water-supply system is fully disinfected before building commissioning; and**

Note 34: *According to the ArchSD, as a voluntary quality assurance measure, water samples were taken from 7 of the total 23 fresh-water tanks and 12 of the total 1,396 fresh-water taps, and the test results were found satisfactory.*

(b) **in collaboration with the Director of Administration, devise strategies to address the risks of water contamination by bacteria due to low utilisation of some fresh-water-supply facilities at Tamar Complex.**

Response from the Administration

5.27 The Director of Architectural Services agrees with the audit recommendations. He has said that:

(a) the requirement for full disinfection of the fresh-water-supply system as stipulated in WSD Circular Letter No. 2/2012 has been incorporated in the ArchSD's recent projects; and

(b) the ArchSD will work closely with the Administration Wing and the LegCo Secretariat to ensure that the measures included in the housekeeping guidelines issued in June 2012 (see para. 5.19(c)) are effectively implemented.

5.28 The Director of Administration agrees with the audit recommendation in paragraph 5.26(b). She has said that the Administration Wing has provided B/Os in the CGC with the housekeeping guidelines on the prevention of Legionnaires' Disease, and the Administration Wing will continue to make arrangements for regular cleaning of the fresh-water-supply facilities at the CGC.

PART 6: WAY FORWARD

6.1 This PART outlines the major audit observations and examines the way forward.

Tamar Development Project

6.2 Tamar Complex comprises important premises of the Administration and the Legislature of the Hong Kong Special Administrative Region, and it forms a landmark at the Central waterfront. At a cost of $5.4 billion, works of the Tamar Development Project under the design-and-build arrangement commenced in February 2008 and were substantially completed in September 2011. Before selecting Contractor A and his design for the Project, the Government had launched a two-month exhibition of the project designs proposed by four tenderers and invited members of the public to express views and comments on the four designs.

6.3 This Project was largely completed on schedule. On the expenditure side, with supplementary funding of $359.8 million approved by the FC in December 2009 to cover additional scope of works, the total expenditure of the Project was within the revised APE of $5,528.7 million.

Major audit observations

6.4 In PART 2, Audit has found that the prices of all four tenders received exceeded the contract sum provided in the APE. For the purpose of reducing the tender sum to within the contract sum provided in the APE, the Tender Negotiation Team conducted tender negotiations with only Contractor A but not with the other three tenderers. However, no criteria for selecting tenderers for negotiation was stated in the tender document. Furthermore, although the Government considered it not practicable to seek additional funding from the FC, a price ceiling was not stated in the tender document.

6.5 In PART 3, Audit has revealed that a long time had been taken in constructing Footbridge A which led to a delay of 2 months and 13 days in commissioning Tamar Complex. Moreover, partly owing to an omission to include the 2006 Design Checklist in the tender document relating to the implementation of seismic-resistant measures, the ArchSD and Contractor A entered into SA3, under which an additional payment of $150 million was made to Contractor A, including $24 million for additional costs on works acceleration and disruption, additional labour, plant and resources, and overtime work.

6.6 In PART 4, Audit has found that, after the award of Contract A and at the request of the LegCo Commission, the ArchSD and Contractor A entered into SA1 for the construction of additional areas at the LCC involving an additional NOFA of 1,415 m^2. The cost of this additional requirement amounted to $113 million, of which $36 million related to acceleration and disruption costs and additional design fee. Audit has also reported that the payback periods of some energy-efficiency equipment were longer than the normal nine-year payback period, and that the energy savings arising from the installation of some equipment using renewable-energy technologies were very low vis-à-vis the related capital investment.

6.7 In PART 5, Audit has also reported that some outstanding works and defects had not been completed and rectified within the one-year maintenance period. The fresh-water-supply system had also not been fully sterilised before commissioning of Tamar Complex.

Post-completion review

6.8 According to ETWB Technical Circular (Works) No. 26/2003 on "Post-completion Review of Major Works Contracts under Public Works Programme", the purposes of conducting a post-completion review are to:

(a) measure the success of a project in achieving its planned objectives on time, within budget and at the specified quality;

(b) bring up the lessons learned, both good and bad, for the benefit of future projects; and

(c) provide an opportunity to review the overall effectiveness of the procurement strategy and procedures so as to identify any necessary improvement areas.

6.9 With a view to assessing the effectiveness of the Tamar Development Project in achieving its planned objectives, and of the procurement strategies and procedures, in Audit's view, the ArchSD needs to, in collaboration with the Administration Wing and LegCo Secretariat, conduct a post-completion review of the Project, taking into account the audit observations in this Audit Report.

Audit recommendation

6.10 **Audit has *recommended* that the Director of Architectural Services should, in collaboration with the Director of Administration and the Secretary General of Legislative Council Secretariat, conduct a post-completion review of the Tamar Development Project, taking into account the audit observations in this Audit Report.**

Response from the Administration and the Legislative Council Secretariat

6.11 The Director of Architectural Services agrees with the audit recommendation. He has said that all the audit observations in this Audit Report will be taken into account in conducting the post-completion review of the Tamar Development Project.

6.12 The Director of Administration agrees with the audit recommendation. She has said that the Administration Wing will provide full support to the ArchSD in conducting the post-completion review of the Tamar Development Project.

6.13 The Secretary General of the Legislative Council Secretariat agrees with the audit recommendation.

Appendix A
(paras. 2.15(b) and (c)
and 2.16 refer)

Stores and Procurement Regulations 385 (d) and (e)

SPR 385(d)

The Permanent Secretary for Financial Services and the Treasury (Treasury) has authorised Controlling Officers or their designated directorate officers not having been involved in the concerned tender exercises to approve negotiations for tenders of their own departments in any of the following circumstances:

(i) when a single tender has been invited with the prior approval of the Permanent Secretary for Financial Services and the Treasury (Treasury); or

(ii) when only one tender or very few tenders have been received in response to an open tender invitation and the procuring department considers the tenders received may not be sufficiently competitive, whether in terms of price or other key quality attributes; or

(iii) when the tender price to be recommended is too high (or too low in the case of a revenue tender) in comparison with the price of similar procurement in the past or in relation to other market information; or

(iv) when the tender to be recommended contains counter-proposals to the tender terms which are disadvantageous to the Government but are not sufficiently substantial or do not cause substantial deviation from the essential requirements contained in the invitation to tender to render the recommended tender non-conforming.

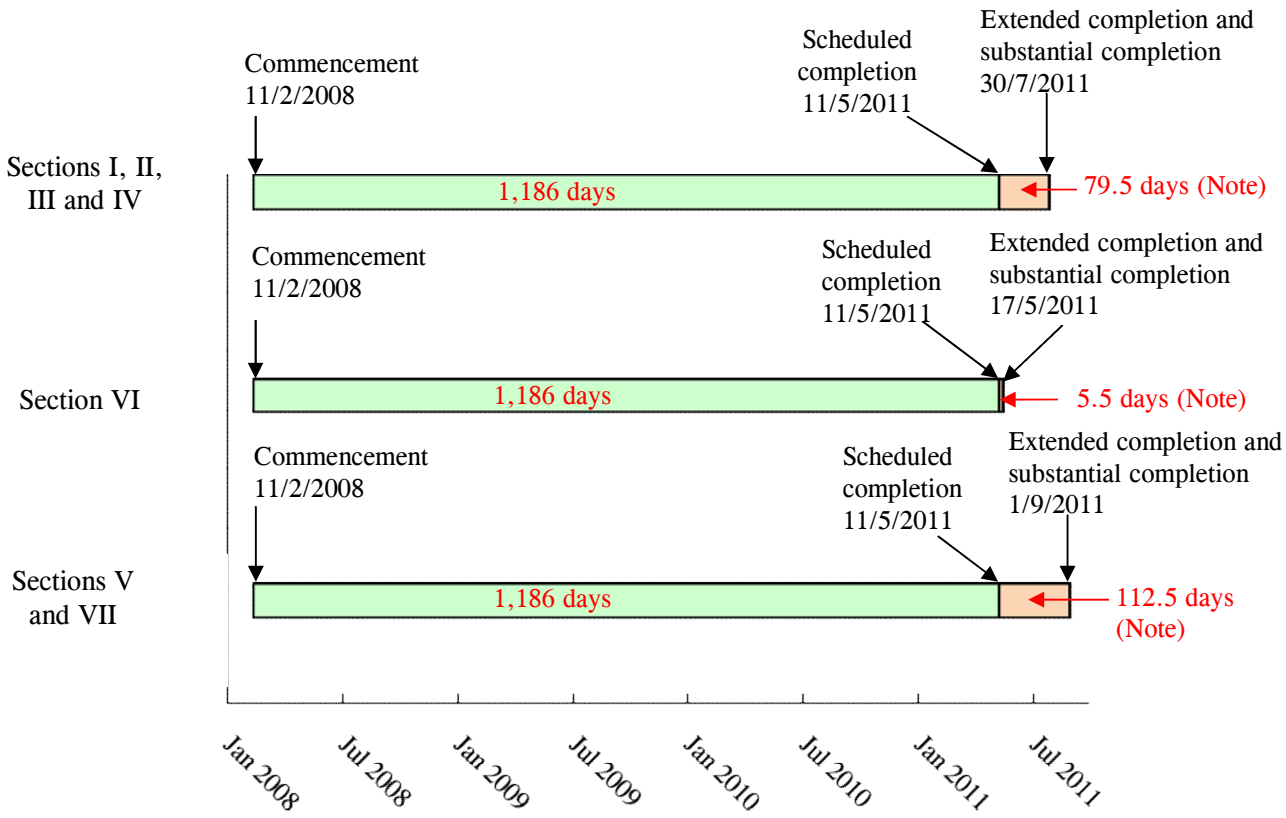
SPR 385(e)

Negotiations under items (d)(ii)-(iv) above shall normally be conducted only with the single conforming tenderer or with the conforming tenderer whose tender has been found to be clearly the most advantageous to the Government in relation to the evaluation criteria. Where no one tender is clearly more advantageous or where the most advantageous tender cannot be determined until the counter-proposals have been resolved or withdrawn, it may be necessary to hold negotiations also with the tenderers who have presented the second or the third lowest (highest for revenue contracts) conforming tenders. Wherever possible, the criteria for selection of tenderers for negotiations shall be stated in the invitation to tender. Where such criteria have not been set forth in the invitation to tender, the selection of tenderers for negotiations must be based on objective and reasonable criteria.

Source: FSTB records

Appendix B
(para. 3.6 refers)

Additional time taken in completing Contract A



Legend: Scheduled contract period

EOTs granted

Source: *Audit analysis of ArchSD records*

Note: *All EOTs granted included an EOT of 5.5 days for inclement weather and clearance of bombs discovered.*

Remarks:
Section I: *Office Blocks of CGC*
Section II: *Low Block of CGC*
Section III: *High Block of LCC*
Section IV: *Low Block of LCC*
Section V: *Elevated Walkway over Harcourt Road (Footbridge A)*
Section VI: *Elevated Walkway linking to CITIC Tower (Footbridge B)*
Section VII: *Open Space and remaining works*

Appendix C
(paras. 3.11 and 3.12 refer)

Chronology of key events of constructing Footbridge A (February 2008 to September 2011)

Month	Key event
(a) February 2008	Contract A commenced and Contractor A submitted to the Transport Department proposed temporary traffic management schemes for the construction of Footbridge A.
(b) April 2008	The Hong Kong Police Force granted approval-in-principle on the proposed temporary traffic management schemes submitted by Contractor A.
(c) June 2008	The ArchSD consulted the Central and Western District Council on the proposed temporary traffic management schemes. The District Council had no adverse comments on the schemes.
(d) July 2008	The Transport Department granted approval-in-principle on the proposed temporary traffic management schemes.
(e) August to October 2008	The ArchSD circulated to the relevant B/Ds a proposed gazette plan for the construction of Footbridge A under the Road (Works, Use and Compensation) Ordinance (Cap. 370).
(f) November 2008	The Transport and Housing Bureau gazetted the proposed construction of Footbridge A for a two-month public consultation (Note 1).
(g) January 2009	At the end of the public consultation period, eight objections were received. The ArchSD and the Administration Wing formed a steering group with a view to resolving the objections.
(h) March to May 2009	The ArchSD took action to resolve the objections and prepared documents for submission to the Chief Executive-in-Council.
(i) June 2009	After considering the objections received, the Chief Executive-in-Council authorised the construction of Footbridge A without any modification.
(j) August 2009	The Transport and Housing Bureau gazetted the decision of the Chief Executive-in-Council on the construction of Footbridge A. The ArchSD instructed Contractor A to complete the footbridge works by the scheduled completion date of May 2011.
(k) September 2009	Contractor A commenced site preparatory works for underground-cable diversion and held a meeting with utility companies: • A utility company expressed that there was no room for relocating a cable duct (Cable duct A). • Contractor A requested the utility company to carry out a detailed survey.

Month	Key event
(l) November 2009	Contractor A and the utility company conducted a joint inspection. Another cable duct (Cable duct B) obstructing the construction of the footbridge foundation was found.
(m) December 2009	• The utility company informed Contractor A that relocation of Cable duct A was not feasible and requested that the footbridge foundation design should be revised to avoid relocation of Cable duct A. • Contractor A requested the utility company to relocate Cable duct B.
(n) February 2010	Assuming that Cable duct B would be relocated, Contractor A proposed to install 56 mini-piles as the footbridge foundation **(Design Option 1)**. Foundation works commenced based on Design Option 1.
(o) March 2010	The utility company informed Contractor A that relocation of Cable duct B was not feasible due to technical reasons, and requested Contractor A to change the footbridge foundation design.
(p) April 2010	Contractor A revised the footbridge foundation design for installing 58 mini-piles **(Design Option 2)** and commenced works accordingly.
(q) June 2010	During construction, ground settlement occurred and the ArchSD asked Contractor A to review the construction method for the mini-pile foundation.
(r) August 2010	The works progress was slow due to cable obstruction. Contractor A gave up Design Option 2 and decided to construct 3 bored piles and 5 mini-piles as the footbridge foundation which would prevent damaging the utility cables **(Design Option 3)**.
(s) November 2010	Upon the ArchSD's approval on Design Option 3, Contractor A commenced the foundation works.
(t) January 2011	Contractor A completed the foundation works.
(u) September 2011	Footbridge A was completed (Note 2).

Source: ArchSD records

Note 1: Under the Roads (Works, Use and Compensation) Ordinance, the Secretary for Transport and Housing shall submit within nine months after the end of the public consultation period all the objections received to the Chief Executive-in-Council for consideration.

Note 2: In July 2012, the ArchSD granted an EOT of 107 days for Footbridge A works.

Appendix D
(paras. 4.2(a) and 4.13 refer)

Projected accommodation in Central Government Complex (May 2006)

Office/Facility	NOFA in former CGO and related buildings (m^2)	Projected NOFA in CGC (m^2)
Chief Executive's Office	1,160	1,580
ExCo Chamber and its Secretariat	880	1,150
Offices of the Chief Secretary for Administration and the Financial Secretary, including Administration Wing and other offices	6,880	6,770
Offices of bureaux	42,890	38,660
Common and ancillary facilities	3,050	8,510
Sub-total	54,860	56,670
Allowance for expansion (10%)	—	5,670
Total	54,860	62,340

Source: Records of Administration Wing

Appendix E
(paras. 4.33, 4.35 and 4.38 refer)

Environmental and energy-efficiency measures

(A) Original Installations (January 2008)

Energy-efficiency equipment	Capital cost (a) ($'000)	Estimated annual energy saving (b) ($'000)	Payback period (c) = (a)÷(b) (year)
(1) Environmental building design	2,700	579	4.7
(2) Environmental air-conditioning and ventilation design			
(a) Re-use of condensate water for fresh air pre-cooling	500	17	29.4
(b) Free cooling design	1,500	60	25.0
(c) Energy recovery system	4,360	597	7.3
(d) Automatic condenser tube cleaning system	800	180	4.4
(e) Heat recovery chiller	500	113	4.4
(f) Energy-efficiency seawater cooled chiller plant	3,924	2,067	1.9
(g) Demand control of fresh air supply	500	338	1.5
(h) Variable speed drive for air-conditioning equipment	2,290	1,840	1.2
(i) Flexible zone control	290	308	0.9
(j) Demand control for carpark ventilation system	500	576	0.9
(k) Intelligent energy optimisation control	1,132	1,589	0.7
(l) Occupancy sensor control	306	504	0.6
(m) High-efficiency motor	518	1,352	0.4

Energy-efficiency equipment	**Capital cost** **(a)** **($'000)**	**Estimated annual energy saving** **(b)** **($'000)**	**Payback period** **(c) = (a)÷(b)** **(year)**
(3) Environmental lift and escalator design			
(a) Automatic on/off switch of lighting and ventilation fan for lift cars	50	7	7.1
(b) Service-on-demand escalator	661	184	3.6
(c) Use of lift regenerative power	0	23	0
(4) Environmental lighting design			
(a) Occupancy sensor and computerised lighting control	3,972	609	6.5
(b) LED exit signs	192	71	2.7
(c) LED lamp as indication light for control panel	0	42	0
(d) Lower lighting power density design	0	612	0
Overall	24,695	11,668	2.1

(B) Additional Installations (April 2010)

Item	Capital cost (a) ($'000)	Estimated annual energy saving (b) ($'000)	Payback period (c) = (a)÷(b) (year)
Energy-efficiency equipment			
(1) Dimming control for footbridge lighting	300	1.7	176.5
(2) LED lighting	30,800	352.8	87.3
(3) Occupancy sensor for lighting	26,000	640.7	40.6
(4) Task lighting design for CGC	11,000	420.1	26.2
(5) Temperature-controlled mechanical ventilation	500	162.8	3.1
Subtotal	68,600	1,578.1	43.5
Equipment using renewable-energy technologies			
(6) Solar hot water system	7,700	18.9	N/A (Note 1)
(7) Thin-film photovoltaic panels	2,400	5.1	
(8) Photovoltaic external lighting for open space	1,200	1.9	
(9) Light pipe	800	2.7	
Subtotal	12,100	28.6	
Environmental-conservation equipment			
(10) Additional infrastructure for power supply to electric vehicles	2,000	N/A (Note 2)	N/A (Note 2)
(11) Recycling bins	1,500		
Subtotal	3,500		
Total	84,200		

Source: *Audit analysis of ArchSD records*

Note 1: *According to the ArchSD, payback-period analyses are not applicable to these items.*

Note 2: *According to the ArchSD, estimated annual energy savings and payback periods are not applicable to these items.*

Acronyms and abbreviations

APE	Approved Project Estimate
ArchSD	Architectural Services Department
Audit	Audit Commission
BD	Buildings Department
B/Ds	Government Bureaux and Departments
B/Os	Government Bureaux and Main Offices
CFA	Construction Floor Area
CGC	Central Government Complex
CGO	Central Government Offices
DEVB	Development Bureau
DH	Department of Health
ENB	Environment Bureau
EOT	Extension of Time
ETWB	Environment, Transport and Works Bureau
ExCo	Executive Council
FC	Finance Committee
FSTB	Financial Services and the Treasury Bureau
kWh	Kilowatt-hour
LCC	Legislative Council Complex
LED	Light-Emitting Diode
LegCo	Legislative Council
m^2	Square metres
NOFA	Net Operating Floor Area
SA	Supplementary Agreement
SPRs	Stores and Procurement Regulations
WSD	Water Supplies Department
WTO	World Trade Organization

CHAPTER 5

Environment Bureau
Agriculture, Fisheries and Conservation Department
Planning Department

Protection of country parks and special areas

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

PROTECTION OF COUNTRY PARKS AND SPECIAL AREAS

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PROTECTION OF COUNTRY PARKS AND SPECIAL AREAS

Executive Summary

1. About 44,240 hectares (ha) or 40% of Hong Kong's land area has been designated as country parks or special areas under the Country Parks Ordinance (Cap. 208). At present, there are 24 country parks and 22 special areas, which comprise scenic hills, woodlands, reservoirs and coastlines. According to the Agriculture, Fisheries and Conservation Department (AFCD), country parks/special areas (collectively referred to as "country parks" hereinafter) are renowned for their natural beauty. They are also the cradle of nature for interesting wildlife and are the best nature classroom. The AFCD is responsible for the management of country parks. In view of the large area covered by country parks and the increasing public concern about nature conservation, the Audit Commission (Audit) commenced a review in April 2013 to examine the AFCD's work in the protection of country parks.

Patrolling and law enforcement

2. Country parks are protected by the Country Parks Ordinance against activities which might not be compatible with the natural environment. Surrounded by or adjacent to country parks are sites left outside the country park boundaries, known as "country park enclaves" (enclaves). Not being regulated by the Ordinance, enclaves are susceptible to incompatible developments which could degrade the integrity and quality of the related country parks. The AFCD deploys its Ranger Office staff to patrol country parks and enclaves to prevent and detect damages and encroachments (paras. 2.2 to 2.6).

3. ***Patrolling practices.*** Audit visited three Ranger Offices and found room for improvement in their patrolling practices, such as: (a) target frequencies for routine patrols not always set/met; (b) coverage of patrol routes not regularly reviewed; (c) few check points (items to be inspected) for patrol routes; and (d) enclaves not adequately inspected (paras. 2.7, 2.9 to 2.12 and 2.16 to 2.18).

4. ***Hill fire prevention.*** AFCD staff keep watch on hill fire from fire lookouts. The staff made use of binoculars to spot hill fire. No electronic devices were adopted to enhance and automate the process. Under the Country Parks and Special Areas Regulations (Cap. 208A), lighting of fire outside designated places (e.g. barbecue sites) is generally prohibited in country parks. Discarding lighted cigarettes in a manner likely to cause a fire is also not allowed. However, smoking is not disallowed in country parks (paras. 2.32, 2.33, 2.36 and 2.37).

Regulating incompatible developments

5. ***Protection of enclaves.*** In his 2010-11 Policy Address, the Chief Executive of the Hong Kong Special Administrative Region stated that enclaves would either be incorporated into country parks, or have their proper uses determined through statutory planning. There were 77 enclaves covering a total area of some 2,000 ha. 23 of the 77 enclaves were covered by Outline Zoning Plans for land use control. In October 2010, the Administration decided to take measures to protect the remaining 54 enclaves. The AFCD and the Planning Department (PlanD) would work together to take follow-up actions. The AFCD would incorporate 27 enclaves into country parks, and the PlanD would cover 27 enclaves by Outline Zoning Plans. As at June 2013, the PlanD had initiated statutory planning process for 23 enclaves. The AFCD had only initiated designation process for incorporating 3 enclaves into country parks. A total of 28 enclaves are still not covered by any protective measures (paras. 3.2, 3.4, 3.6, 3.7, 3.9 and 3.13).

6. ***Public works projects in country parks.*** In 1991, the then Director of Agriculture and Fisheries approved an encroachment of the South East New Territories Landfill in Tseung Kwan O onto a site of 18 ha in the nearby Clear Water Bay Country Park. At present, the Landfill is still in operation. There is no definite timeframe for the restoration and return of the 18 ha of land to the AFCD. Audit is concerned that the land which has already been used for landfill purposes may no longer be compatible with the country park objectives (paras. 3.36, 3.39 and 3.40).

Publicity and educational activities

7. ***School education programmes.*** The AFCD conducted school visits and other school education programmes to disseminate conservation messages to students. While school visit programmes were generally well received and effective, the AFCD rejected many schools' applications for the programmes due to insufficient time slots. Besides, such programmes are currently unavailable for secondary schools. The AFCD has developed an education kit to supplement its school education programmes. However, the AFCD had not ascertained the number of schools which had adopted the kit. Regular training on the use of the kit was also not conducted for teachers (paras. 4.5 to 4.10).

8. ***Publicity of the Hong Kong Geopark.*** Included in the country parks is the Hong Kong Geopark. In pursuit of the Geopark objectives, the AFCD enlists the support of non-governmental organisations and the private sector to publicise the Geopark and promote geo-tourism. The AFCD did not enlist these partners in an open and transparent manner, and did not have formal contracts with them, but their service descriptions and website links were advertised on the government website. This may give an impression that the AFCD is advertising commercial activities on a government website (paras. 4.22, 4.27, 4.30 and 4.32).

Way forward

9. In 1993, the AFCD and the PlanD found 14 potential sites with conservation value for designation as country parks. As at August 2013, 9 of the 14 potential sites had not been designated as country parks. In the past two decades, Hong Kong has undergone a lot of economic development. Today, there are also great competing demands for land use and multifarious factors affecting the designation of new country parks. It is timely for the AFCD to revisit its strategy for the designation of new country parks in future (paras. 5.3, 5.4 and 5.6).

Audit recommendations

10. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

Patrolling and law enforcement

(a) **require all Ranger Offices to set target frequencies for routine patrols (para. 2.23(a));**

(b) **review the adequacy of the coverage and frequency of routine patrols in individual Ranger Offices (para. 2.23(b));**

(c) **consider setting more check points for inspection (para. 2.23(f));**

(d) **keep in view the advance in technology for automated fire surveillance systems that may be applied in country parks (para. 2.41(a));**

(e) **examine the desirability of restricting smoking in country parks (para. 2.41(b));**

Regulating incompatible developments

(f) **critically review the progress made by the AFCD in protecting enclaves with a view to devising a more effective strategy (para. 3.22(a));**

(g) **continue to monitor possible incompatible development activities at enclaves for necessary follow-up action (para. 3.22(b));**

(h) **follow up the expected timeframe and the required restoration work for the return of the 18 ha of land in the Clear Water Bay Country Park to the AFCD (para. 3.41(a));**

Publicity and educational activities

(i) **take measures to further enhance the school education programmes (para. 4.11(a));**

(j) **conduct an evaluation of the education kit and ensure that adequate support is provided to users (paras. 4.11(b) and 4.11(c));**

(k) **review the adequacy of the collaboration arrangements between the AFCD and its Geopark partners (para. 4.35(a));**

(l) **improve the transparency and accountability in the recruitment of Geopark partners (para. 4.35(c));**

(m) **review the appropriateness of advertising Geopark partners' commercial activities on the government website (para. 4.35(d)); and**

Way forward

(n) **revisit the AFCD's strategy for the designation of new country parks (para. 5.10(a)).**

Response from the Administration

11. The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 Although Hong Kong is one of the world's metropolises, out of a total of 110,800 hectares (ha) of land, about three-quarters is countryside.

Natural environment of Hong Kong

1.3 As stated in the Agriculture, Fisheries and Conservation Department (AFCD — Note 1) website, Hong Kong's topography and sub-tropical climate provide a wide range of habitats to support a rich variety of flora and fauna (Note 2). Scenically, it has a great deal to offer: a landscape rising from sandy beaches and rocky foreshores to a height of almost 1,000-metre high, woodlands and hilly areas covered by open grassland and a variety of scenic vistas rarely matched in such a small place.

Country parks and special areas

1.4 A large part of the countryside has been designated as country parks or special areas under the Country Parks Ordinance (Cap. 208 — Note 3), which comprise scenic hills, woodlands, reservoirs and coastlines in all parts of Hong

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Note 1: *Prior to 2000, the AFCD was known as the Agriculture and Fisheries Department.*

Note 2: *Regarding its flora, Hong Kong has more than 3,100 species of vascular plants, of which about 2,100 are native. As for its fauna, there are some 50 species of mammals, over 500 species of birds, about 80 species of reptiles and more than 20 species of amphibians. Insect diversity is also very high with more than 230 species of butterflies and around 115 species of dragonflies.*

Note 3: *The Ordinance provides a legal framework for the designation, development and management of country parks and special areas.*

Kong. Country parks are designated for the purpose of nature conservation, countryside recreation and nature education. Special areas are land with special interest and importance by reason of their flora, fauna, geological, cultural or archaeological features (Note 4). They are designated mainly for the purpose of conservation.

1.5 As stated in the AFCD website, the country parks and special areas are natural wonders renowned for their natural beauty. They not only offer spectacular, picturesque sceneries, but also are the cradle of nature for a wide variety of interesting wildlife and are the best nature classroom. At present, there are 24 country parks and 22 special areas (collectively termed "country parks" in this Audit Report — see Appendix A for details), covering a total of some 44,240 ha, representing about 40% of Hong Kong's land area. A map showing the distribution of country parks is at Appendix B.

Hong Kong Global Geopark of China

1.6 Included in the country parks are some 5,000 ha of areas of geological interest (geo-areas) which form the Hong Kong Global Geopark of China (Hong Kong Geopark — Note 5). Photograph 1 shows a country park, which is a popular destination for nature studies and outdoor activities. Photograph 2 shows a special area, which is a geo-area of the Hong Kong Geopark.

Note 4: *Unlike country parks which comprise both government land and private land (i.e. leased land), special areas comprise only government land.*

Note 5: *A geopark is an area containing geological heritage sites of particular importance. The Hong Kong Geopark has eight geo-areas (e.g. High Island Geo-Area and Sharp Island Geo-Area) which are located in different country parks. Originally, the geo-areas were named "Hong Kong National Geopark" in November 2009. In September 2011, the Geopark was accepted as a member of the Global Geoparks Network which was supported by the United Nations Educational, Scientific and Cultural Organisation, and was renamed "Hong Kong Global Geopark of China".*

Photographs 1 and 2

Views of a country park and a special area

Photograph 1

A popular country park
(Clear Water Bay Country Park)

Photograph 2

A geological site in a special area
(High Island Special Area)

Source: AFCD records

Management of country parks

1.7 Under the Country Parks Ordinance, the Director of Agriculture, Fisheries and Conservation is the Country and Marine Parks Authority who is responsible for administering the Ordinance. His duties include:

(a) making recommendations to the Chief Executive of the Hong Kong Special Administrative Region for the designation of areas as country parks;

(b) developing and managing country parks; and

(c) taking such measures in respect of country parks as he thinks necessary (e.g. encouraging their use and development for the purposes of recreation and tourism, and protecting the vegetation and wildlife inside country parks).

1.8 The Ordinance also provides for the establishment of the Country and Marine Parks Board to advise the Director on all matters related to country parks. As at September 2013, the Board comprised a Chairman, 20 non-official members, and a number of official members including the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation, and representatives from the Environmental Protection Department (EPD), the Home Affairs Department, the Lands Department (LandsD), the Leisure and Cultural Services Department, the Marine Department, the Planning Department (PlanD) and the Water Supplies Department (Note 6). Its terms of reference are to:

(a) act as a consultative body to advise the Country and Marine Parks Authority upon any matter referred to it by the Authority;

(b) consider, and advise the Authority on, the policy and programmes prepared by the Authority in respect of existing and proposed country parks, marine parks and marine reserves; and

(c) consider any objection that may be lodged under the Country Parks Ordinance and the Marine Parks Ordinance (Cap. 476).

1.9 The Country and Marine Parks Branch of the AFCD is responsible for the management of country parks, including development control, patrolling, fire fighting, tree planting, litter collection, and organisation of educational activities for the management and protection of the country parks. As at June 2013, some 920 staff of the Branch were directly involved in the country park daily operation. An organisation chart of the Branch is at Appendix C. The management of country

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Note 6: *According to the Country Parks Ordinance, the Board shall consist of the Country and Marine Parks Authority and not less than 10 other members, of whom not less than 5 shall be public officers. Under authority delegated by the Chief Executive, the Secretary for the Environment may appoint any member of the Board as the Chairman of the Board. The members of the Board, other than those members who are public officers, shall be appointed for a period of two years or for such lesser period as the Chief Executive may in any particular case determine and shall be eligible for re-appointment.*

parks, which has an estimated expenditure of $298 million in 2013-14, falls within the ambit of the AFCD's "Nature Conservation and Country Parks" Programme (Note 7).

1.10 Country parks are popular with different sectors of the community. As the AFCD states on its website, spending a day in a country park is one of the best recreational choices in town for the public. In 2012-13, about 13 million people visited the country parks in Hong Kong. According to a comprehensive survey of visitors to country parks conducted by the AFCD in 2012 (the 2012 Survey — Note 8), visitors were primarily driven to pay their visits by the good environment (e.g. good scenery, clean fresh air and tranquility) and the convenient locations of the country parks (see Figure 1 for details). It was also found that visitors were generally satisfied with their visits to the country parks (Note 9).

Note 7: *Apart from the management and protection of country parks, the "Nature Conservation and Country Parks" Programme also includes other activities such as the designation and management of marine parks and marine reserves, and the control of international trade in endangered species of animals and plants in Hong Kong. The Programme has an estimated expenditure of $552 million in 2013-14.*

Note 8: *The survey, entitled "Country Parks Visitor Survey 2012", was conducted through consultants engaged by the AFCD. Some 4,000 visitors were surveyed. The primary objectives of the survey were to:*

(a) investigate the profile of visitors;

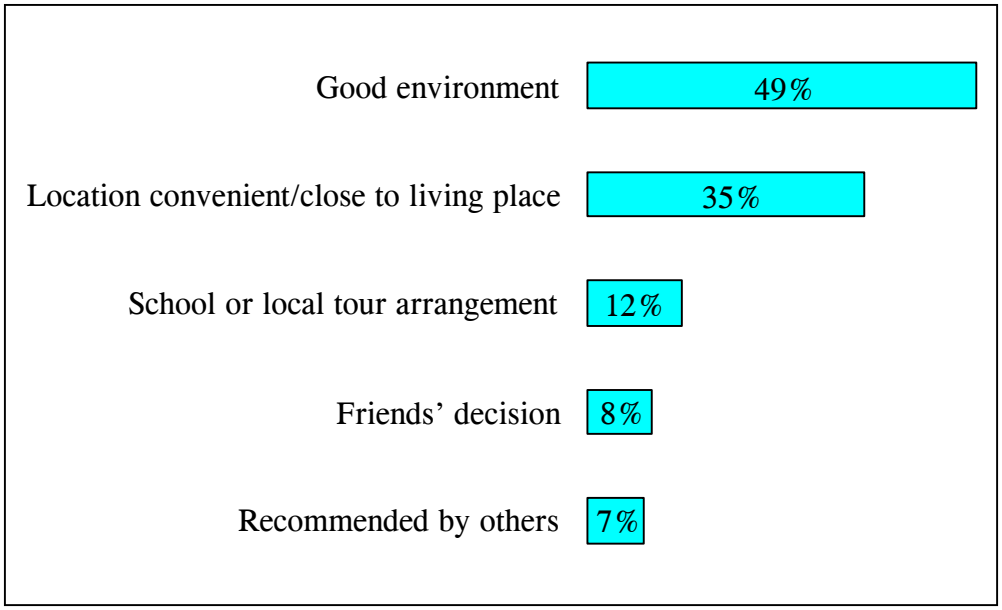
(b) gauge the visitation and satisfaction of visitors towards country parks; and

(c) find out areas for improvement for country parks.

Note 9: *Out of a maximum score of 5, the overall satisfaction of the respondents surveyed was 3.72.*

Figure 1

Reasons for visiting country parks
(Top five reasons selected by respondents)



Source: *AFCD 2012 Survey Report*

Remarks: *The percentage indicates the proportion of respondents selecting the reason. A respondent could select more than one reason.*

Increasing public concern about nature conservation

1.11 In recent years, there has been an increasing public awareness of the importance of nature conservation and environmental protection in Hong Kong. As revealed in the 2012 Survey (see para. 1.10), many Hong Kong people treasure the good environment of the country parks which are located close to their living places. From time to time, incidents of human damage to the natural environment of the country parks have become causes for public concern (see paras. 3.3 and 3.4 for details). All these have highlighted the importance of the AFCD's role in the protection of country parks in Hong Kong.

Audit review

1.12 In view of the large area covered by country parks (see para. 1.5) and the increasing public concern about nature conservation (see para. 1.11), the Audit Commission (Audit) commenced a review in April 2013 to examine the AFCD's work in the protection of country parks (Note 10). The audit fieldwork was completed in August 2013. The audit review focused on the following areas:

(a) patrolling and law enforcement (PART 2);

(b) regulating incompatible developments (PART 3);

(c) publicity and educational activities (PART 4); and

(d) way forward (PART 5).

Audit has found that there is room for improvement in the above areas and has made a number of recommendations to address the issues.

Acknowledgement

1.13 Audit would like to acknowledge with gratitude the assistance and full cooperation of the staff of the AFCD, the PlanD, the LandsD, and the EPD during the course of the audit review.

Note 10: *The management of the Hong Kong Wetland Park (a special area under the Country Parks Ordinance) is not covered by this audit review. Unlike other country parks and special areas which are managed by the Country and Marine Parks Branch of the AFCD, the Hong Kong Wetland Park is managed in a different mode by the Conservation Branch of the AFCD. In 2011, Audit conducted a review entitled "Management of the Hong Kong Wetland Park", the results of which were included in Chapter 6 of the Director of Audit's Report No. 57 of October 2011.*

PART 2: PATROLLING AND LAW ENFORCEMENT

2.1 This PART examines the protection of country parks through patrolling and law enforcement work, focusing on the following areas:

(a) patrolling practices (paras. 2.2 to 2.24);

(b) regulation of camping (paras. 2.25 to 2.30); and

(c) hill fire prevention (paras. 2.31 to 2.42).

Patrolling practices

Patrolling country parks

2.2 The main purpose of designating country parks is for nature conservation (see para. 1.4). Upon designation, country parks are protected by the Country Parks Ordinance, as well as the Country Parks and Special Areas Regulations (Cap. 208A) which was made under the Ordinance. The Country Parks Ordinance (including its Regulations) regulates activities which might not be compatible with the natural environment. The Country Parks Ordinance also controls, among other things, possible eco-vandalism.

2.3 To enforce the Country Parks Ordinance and other relevant laws (Note 11), the AFCD's Country Parks Ranger Services Division deploys staff to patrol country parks. Offences (e.g. driving vehicles without permits within country parks, littering, and unauthorised camping) found during patrols would be prosecuted. In 2012-13, the AFCD prosecuted 990 cases for offences relating to country parks (see Appendix D for details).

Note 11: *Examples of the other laws are the Forests and Countryside Ordinance (Cap. 96) and Wild Animals Protection Ordinance (Cap. 170).*

Patrolling country park enclaves

2.4 Surrounded by or adjacent to country parks are sites left outside the country park boundaries, known as "country park enclaves" (enclaves). The enclaves comprise both private and government land (Note 12), and are not part of the country parks under the protection of the Country Parks Ordinance. Owing to the fast pace of urbanisation, some enclaves are facing increasing development pressure. Not being protected by the Country Parks Ordinance, enclaves are susceptible to incompatible developments which could degrade the integrity, aesthetic quality and landscape quality of the related country parks as a whole.

2.5 To help control unauthorised development at enclaves, and hence maintain the integrity and quality of the related country parks, the Country Parks Ranger Services Division requires its staff to also patrol the enclaves on a regular basis. There are currently 77 enclaves (see para. 3.2). More details about the protection of enclaves through regulating incompatible developments are given in paragraphs 3.2 to 3.25.

Ranger Offices

2.6 As at June 2013, the Country Parks Ranger Services Division had some 140 staff for conducting patrols (patrol staff — Note 13). They were stationed in the Division's 17 Ranger Offices, located in different country parks. Each Ranger Office served a specific area of country parks, and saw to it that patrols were conducted on a regular basis (routine patrols). As many parts of country parks were not accessible by cars, foot patrols were an important means of conducting routine

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Note 12: *Prior to 2011, if there were pre-existing private land lots and human settlements inside or adjacent to the proposed boundaries of country parks, private land was usually left outside the boundaries except where the private land owners did not raise objection to the incorporation of their land as part of the country parks (see also para. 5.5(b)). To provide buffer areas, some government land in the vicinity of the excluded private land would also be excluded from the boundaries of the country parks.*

Note 13: *Patrol staff were usually Park Wardens. As at June 2013, there were 131 full-time and 12 part-time patrol staff. Park Wardens were responsible for a wide range of duties including patrols, law enforcement, provision of visitor services, and organising publicity events and education programmes.*

patrols (Note 14). From time to time, the Ranger Offices also conducted special operations to supplement the routine patrols (e.g. visiting villages to promote fire prevention, searching for illegal animal traps, and combating illegal tree felling activities — Note 15).

2.7 The 17 Ranger Offices are grouped under three geographical regions, namely, Northwest Region, East Region and Hong Kong Region. In June and July 2013, Audit visited three Ranger Offices (one Ranger Office selected from each region), namely Tai Mei Tuk Ranger Office (Ranger Office A), Sai Kung Ranger Office (Ranger Office B) and Tung Chung Au Ranger Office (Ranger Office C). Audit reviewed their planning and conduct of patrols (see paras. 2.8 to 2.24).

Planning of routine patrols

2.8 Each Ranger Office has adopted a number of foot beats (i.e. routes for patrolling on foot) for routine patrols. The frequencies (e.g. once a month) for patrolling individual foot beats vary. Supervisors of patrol staff set out in a duty roster the foot beats for individual staff.

Routine patrols not meeting the target frequencies

2.9 Ranger Offices A and B have set and laid down the target frequencies for patrolling individual foot beats (see para. 2.11 for Ranger Office C's practice). Audit noted, however, that target frequencies were not always met. Table 1 shows that, for 72% of the foot beats in Offices A and B, the actual frequencies of conducting routine patrols fell short of the laid-down frequencies.

Note 14: *Ranger Offices also conducted patrols by other means (e.g. cars) where appropriate.*

Note 15: *The combating of illegal tree felling was usually carried out in collaboration with the police.*

Table 1

Routine patrols conducted by selected Ranger Offices
(July 2012 to June 2013)

Ranger Office	Foot beat adopted		Actual frequency			
			Foot beat met the target frequency		Foot beat fell short of the target frequency (Note)	
	(No.)	(%)	(No.)	(%)	(No.)	(%)
A	16	100%	6	37%	10	63%
B	16	100%	3	19%	13	81%
Overall	32	100%	9	28%	23	72%

Source: Audit analysis of AFCD records

Note: The target frequencies of the 32 foot beats ranged from 12 to 104 a year. The shortfall in the number of routine patrols for individual beats ranged from 1 to 68.

2.10 Upon enquiry, the AFCD informed Audit in August and September 2013 that:

(a) the "target frequencies" were a rough guideline for supervisors to plan patrolling duties for frontline staff. The exact frequencies for individual beats would be adjusted based on operational need;

(b) some beats only marginally fell short of the target frequencies. Of the 23 beats which did not meet the target frequencies (see Table 1):

(i) 8 beats fell short of the target number of routine patrols by 9% or less (e.g. only 1 out of the 12 required routine patrols was not conducted during the period July 2012 to June 2013); and

(ii) 15 beats fell short of the target number by more than 9%;

(c) according to the target frequencies set for the 32 foot beats, the target number of routine patrols for the period July 2012 to June 2013 was 660. Ranger Offices A and B in fact conducted 523 patrols; and

(d) the major reasons for not being able to meet the overall targets were due to redeployment of staff resources for special operations and other ad hoc/urgent tasks encountered from time to time.

Target frequencies not set for routine patrols

2.11 For Ranger Office C, Audit found no records of target frequencies for its 16 foot beats. Upon enquiry, Audit was informed in July 2013 that the Office had not laid down any target frequencies for foot beats. Audit considers this less than satisfactory. Audit also noted that Ranger Office C did not always follow the AFCD guideline issued in December 2010, requiring that enclaves situated along existing foot beats should be inspected when patrolling the beats.

Coverage of foot beats

2.12 In this connection, Audit noted that Ranger Offices' routine patrols generally covered important places such as scenic areas, major hiking routes and facilities for the public (e.g. barbecue areas). However, of the 54 enclaves for which Outline Zoning Plans (OZPs) have not yet been prepared (see para. 3.4), 10 enclaves were not covered by any foot beats. Audit found no evidence that the AFCD had conducted regular reviews of the coverage of the foot beats taking account of relevant factors (e.g. need for monitoring development activities in enclaves and on private land). Upon enquiry, the three Ranger Offices (i.e. A, B and C) informed Audit in July 2013 that the existing foot beats for routine patrols had been used for a long time without revisions. Audit considers that the AFCD needs to review the adequacy of the coverage and frequency of routine patrols having regard to the present day circumstances, in particular, the need to inspect enclaves and private land (see paras. 3.2 to 3.33).

Conducting routine patrols

2.13 In June and July 2013, Audit staff accompanied patrol staff of Ranger Offices A, B and C to conduct routine patrols. A total of nine routine patrols were selected (i.e. three for each Ranger Office). The patrols were conducted on different days and involved different foot beats (Foot Beats 1 to 9). Length of the Foot Beats ranged from 2.4 to 10.8 kilometres (km). Two patrol staff (accompanied by one Audit staff) were assigned to carried out each of the selected routine patrols (see Photograph 3).

Photograph 3

AFCD staff conducting a routine patrol (July 2013)

Source: *Photograph taken by Audit during the patrol on 23 July 2013*

Use of unplanned time

2.14 Patrol staff in Ranger Offices A, B and C were usually given the whole working day to complete a routine patrol (Note 16). According to the Ranger Offices' duty rosters for the days of the selected routine patrols, no duties were planned for the patrol staff after they completed the selected routine patrols. The actual time taken for each of the selected foot beats ranged from about 1.4 to 5 hours.

2.15 Audit noted that, after conducting the selected routine patrols, staff made use of the unplanned time for related duties (e.g. reporting, statement taking for prosecution cases, compiling visitor statistics and analysing problems in connection with country park management) and recouping from the strenuous walk. According to the AFCD, such duties were assigned by the staff's supervisors after the completion of each routine patrol. Audit reviewed some of the patrol records and found that the patrol staff usually did not keep records of how the unplanned time was used. Moreover, the unplanned time appeared to be excessive in some cases. For example, two of the selected routine patrols (for Foot Beats 8 and 9) just took less than two hours to complete. This was not conducive to good accountability and efficient deployment of staff.

Check points for routine patrols

2.16 Patrol staff used a handheld digital device (personal data assistant — PDA) to help conduct routine patrols. The PDA displayed on its screen a number of "check points" for a foot beat, which served as a checklist of the items to be inspected during the routine patrol (Note 17). The check points could be geographical features and facilities situated along the foot beat (e.g. campsites, picnic sites and emergency telephone booths). Patrol staff needed to tick against the check points on their PDAs to acknowledge that such features and facilities had been inspected.

Note 16: *Patrol staff normally work 45 hours a week (i.e. about 9 hours a day) based on 5 working days a week.*

Note 17: *The check points were preset in the PDAs. Patrol staff were allowed to add additional check points to their PDAs. Patrol staff also used their PDAs to record the patrol details (e.g. irregularities found and actions taken).*

2.17 The AFCD had not laid down guidelines on setting check points for routine patrols. Audit noted that, on the days of the selected routine patrols, the number of check points for Foot Beats 1 to 9 varied (ranged from 3 check points for Foot Beats 6, 8 and 9, to 24 check points for Foot Beat 3). In particular, 6 Foot Beats had less than 1 check point per km along the Foot Beat (i.e. Foot Beats 1, 2, 4, 5, 6 and 9).

2.18 Audit considers that more check points could help improve patrol staff's accountability (e.g. patrol staff needed to acknowledge on the PDA that the check points had been inspected — see para. 2.16), as well as help improve the quality of patrolling (e.g. reducing the risk of overlooking important features and facilities). There is merit in setting more check points with reference to such geographical features/facilities as:

(a) ***Distance posts.*** A distance post is generally erected every 500 metres along hiking trails in country parks (see Photograph 4). The post is an important landmark which could enable visitors to identify their whereabouts or tell their locations when they need help (e.g. if they get lost or they notice illegal activities). Distance posts were erected along 8 of the 9 selected Foot Beats. Audit noted that, for 4 Foot Beats, some distance posts were set as check points. The other 4 Foot Beats did not have any distance posts set as check points at all;

Photograph 4

A distance post along Foot Beat 1

Source: Photograph taken by Audit on 4 July 2013

(b) ***Emergency telephone booths.*** Telephone booths for making emergency calls are provided in country parks (see Photograph 5). Visitors can make use of the emergency telephones to seek help and report illegal activities. This is an important facility for visitors' safety. Audit noted that emergency telephone booths were not always set as check points for routine patrols. Along Foot Beats 1 to 9, there were 6 emergency telephone booths. Only 2 of them were set as check points; and

Photograph 5

An emergency telephone booth in Foot Beat 3

Source: Photograph taken by Audit on 31 July 2013

(c) ***Enclaves (see para. 2.4).*** Situated along Foot Beats 1 to 9 were 15 enclaves. Only one of these enclaves was set as check point for inspection. During the selected routine patrols, Audit noted that the patrol staff conducted an inspection visit to the enclave. They also conducted inspection visits to two other enclaves which were not set as check points. However, the patrol staff did not conduct inspection visits to the remaining 12 enclaves, contrary to the AFCD guideline issued in December 2010 (see paras. 2.5 and 2.11).

2.19 Upon enquiry, the AFCD informed Audit in September 2013 that:

(a) most enclaves by nature involved private land. AFCD staff should avoid trespassing into private land as far as possible due to possible legal implications and potential conflicts with the villagers;

(b) hence, the AFCD's approach was to inspect enclaves along the patrol routes to spot any irregularities based on the experience of patrol staff who were familiar with the existing site conditions. When irregularities were spotted, patrolling frequency and intensities would be stepped up appropriately. The enclaves would be inspected in more detail (e.g. the three enclaves inspected by patrol staff as noted in para. 2.18(c)); and

(c) although some of the enclaves were not set as check points for inspection, they were inspected along the patrol routes as far as possible and photo records were taken at vantage points without entering into the enclaves.

2.20 Audit considers that the AFCD needs to consider setting more check points for inspection along the foot beats with a view to improving the accountability of patrol staff and the quality of their routine patrols.

Location-tracking function not always available

2.21 Patrol staff's PDAs are equipped with the Global Positioning System (GPS — Note 18) function. Once the GPS function is activated, the PDAs will automatically track and record the locations of patrol staff at regular time intervals. Such information would be available for review by the patrol staff's supervisors.

2.22 Audit considers that this is a very useful function which could further improve the accountability of staff in conducting routine patrols. However, this function was not always working properly. The AFCD informed Audit that, due to technical problems, the function had been suspended from April to July 2013 (including the time when Audit accompanied the selected routine patrols).

Note 18: *GPS refers to the satellite navigation system which provides location and time information to users around the world.*

Audit recommendations

2.23 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

(a) **require all Ranger Offices to set appropriate target frequencies for routine patrols of their foot beats;**

(b) **review the adequacy of the coverage and frequency of routine patrols in individual Ranger Offices, taking account of the need for monitoring development activities in enclaves and on private land;**

(c) **remind Ranger Offices to conduct routine patrols according to the planned coverage and frequencies;**

(d) **require Ranger Offices to maintain adequate records of staff deployment, in particular, records of the use of any unplanned time after completion of routine patrols;**

(e) **take measures to improve the efficiency in the conduct of routine patrols;**

(f) **consider setting more check points for inspection along the foot beats, with a view to improving the accountability of patrol staff and the quality of their routine patrols; and**

(g) **ascertain the reasons for and minimise the downtime of the GPS function of the PDAs provided to patrol staff.**

Response from the Administration

2.24 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations. He has also said that:

(a) the AFCD would review regularly and set more realistic target frequencies for routine patrols, and establish a proper record-keeping system for any adjustments made to the targets as well as the justifications for the adjustments;

(b) the AFCD would review regularly the patrol routes to cover all the enclaves, and the frequency of visits would be determined by a range of factors including the risk of unauthorised development in the enclaves and complaints received;

(c) the 10 enclaves currently not covered by any routine foot beats (see para. 2.12) are generally very remote and the accessibility is low (e.g. some of them are even not connected to any trails or footpaths). The development threats of these sites are perceived to be relatively lower as compared with other enclaves. As such, some of them have only been inspected on an ad hoc basis;

(d) the bulk of work undertaken by Park Wardens after they have completed the patrols is routine in nature. The AFCD would enhance record keeping on deployment of Park Wardens for better accountability; and

(e) the AFCD would review the patrol routes to incorporate enclaves as check points as appropriate.

Regulation of camping

2.25 The AFCD's 2012 Survey (see para. 1.10) revealed that camping was one of the popular activities in country parks (Note 19). On the other hand, camping in country parks in an uncontrolled manner would cause damage to the natural environment. To regulate camping, the AFCD has set aside and designated campsites in country parks. Camping outside the designated campsites (unauthorised camping) would be prosecuted. In 2012-13, among other offences in country parks, unauthorised camping was the third most common type of offences being prosecuted. The number of prosecution cases in 2012-13 was 91.

Note 19: *For example, 22% of the survey respondents at Sai Kung West (Wan Tsai Extension) Country Park replied that their primary activity at the Country Park was camping.*

2.26 In March 2013, in response to a Legislative Council (LegCo) Member's enquiry about unauthorised camping in country parks, the AFCD informed LegCo that:

(a) there were 40 designated campsites in country parks;

(b) the provision of campsites was regularly reviewed to meet the needs of country park visitors;

(c) when designating a campsite, the AFCD would take into account factors such as terrain, accessibility, water supply, scenic value and potential of fire hazard of the location, as well as the impact of the camping activity on the natural environment and neighbouring villages; and

(d) over the past five years, three new campsites had been designated.

Camping facilities not fully meeting visitors' needs

2.27 Audit noted that there were media reports about visitors' adverse comments on the number and location of designated campsites in country parks. In spite of the AFCD's efforts in increasing the number of designated campsites over the past five years (see para. 2.26(d)), there were many (91) prosecution cases relating to unauthorised camping in 2012-13 (see Appendix D). It appears that the AFCD's camping facilities in country parks could not fully meet visitors' needs, resulting in camping outside the designated campsites. This may cause damage to the natural environment.

2.28 In order to encourage camping in designated campsites, there is a need for the AFCD to improve its camping facilities in country parks. For example, the following issues need to be addressed:

(a) ***No designated campsites in some country parks.*** Audit analysis found that, as at June 2013, 12 of the 24 country parks did not have any designated campsites. In 5 of them (Note 20), the AFCD prosecuted a

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Note 20: *The five country parks were Aberdeen, Clear Water Bay, Lion Rock, Tai Tam, and Tai Tam (Quarry Bay Extension) Country Parks.*

total of 23 cases of unauthorised camping in the past three years from 2010-11 to 2012-13 (Note 21). Visitors' demand for camping in country parks without designated campsites might need to be better addressed; and

(b) ***Inadequate number of tent spaces.*** Tent spaces were provided in designated campsites. As at June 2013, the 40 designated campsites provided 409 tent spaces, or an average of 10 tent spaces each. While 2 of the campsites (namely Nam Shan and Hok Tau Campsites) provided as many as 40 tent spaces each, 10 campsites had only 5 or fewer tent spaces each. The small number of tent spaces in some campsites might not be adequate for meeting visitors' needs, especially during the peak season for camping.

Audit recommendations

2.29 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should, having regard to the need for conserving natural environment, take measures to better meet visitors' needs for camping in country parks, such as:**

(a) **exploring the feasibility of providing new designated campsites in suitable locations, in particular, in country parks which do not have any designated campsites; and**

(b) **consider providing more tent spaces at existing designated campsites.**

Response from the Administration

2.30 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations.

Note 21: *The numbers of prosecution cases were 7, 4 and 12 in 2010-11, 2011-12 and 2012-13 respectively.*

Hill fire prevention

2.31 Hill fire destroys ecological environments and kills wild animals. To help prevent occurrences of hill fire in country parks, the AFCD takes various measures, such as establishing fire breaks, providing barbecue sites for public use, prosecuting offenders for illegal lighting of fire, and educating the public about fire prevention. The AFCD's Country Parks Divisions are responsible for fighting hill fire within country parks. If required, the Fire Services Department, the Civil Aid Service and the Government Flying Service will also join in fighting hill fire. The number of hill fire incidents inside country parks decreased by 65% from 51 in 2008-09 to 18 in 2012-13.

2.32 There are 11 fire lookouts in country parks. During the fire season (from October to April), staff of the Divisions work 24-hour shifts at fire lookouts to keep watch on hill fire, with two staff in each shift. The number of fire lookouts to be manned depends on the assessed fire risks having regard to relevant factors (e.g. humidity). Photographs 6 and 7 show a fire lookout located in a country park.

Photographs 6 and 7

A fire lookout
(Tai Mo Shan Country Park)

Photograph 6

The outside

Photograph 7

The inside

Source: Photographs taken by Audit in May 2013

Manual surveillance of hill fire

2.33 The Country Parks Divisions' surveillance of hill fire was basically operated manually. In 2012-13, staff of the Divisions spent a total of about 2,700 man-days (Note 22) in fire lookouts to keep watch on hill fire. The staff merely made use of binoculars to spot hill fire. No electronic devices were adopted to enhance and automate the process. Like all manual processes, such surveillance of hill fire is labour-intensive and prone to human errors.

2.34 Audit notes that some Mainland/overseas cities have adopted automated fire surveillance systems, employing such devices as infrared thermal scanners and visible light cameras to capture real-time images for computer and manual analysis. Upon enquiry, the AFCD informed Audit in August and September 2013 that:

(a) a wildfire detection system using infrared thermal remote sensing technology had been tested at a fire lookout in Tai Lam Country Park in 2010. Performance of the system was found limited by such factors as unstable connectivity of mobile telecommunication networks, unstable power supply in the area, and susceptibility to interference from ambient environment conditions, such as the light sources in the populated area (e.g. village areas) near country parks; and

(b) given the limitations, it was then considered that the technology was not yet feasible to substitute the manual surveillance of hill fire in current practice.

2.35 Audit considers that there is merit for the AFCD to keep in view the advance in technology of automated fire surveillance systems, so as to continue exploring the use of automated systems to supplement its manual process. In the longer term, using automated systems might help improve the AFCD's work in hill fire surveillance.

Note 22: *One man-day refers to one staff member working a 24-hour shift.*

Control of smoking

2.36 Under the Country Parks and Special Areas Regulations, lighting of fire outside designated places (e.g. barbecue sites and campsites) is generally prohibited in country parks. Discarding lighted cigarettes in a manner likely to cause a fire is also not allowed.

2.37 In spite of the prohibition of lighting fire and discarding lighted cigarette butts, smoking is not disallowed in country parks (Note 23). Audit considers this unsatisfactory due to the following reasons:

(a) ***Fire hazard.*** Smoking in country parks is not in line with the spirit of hill fire prevention. According to the AFCD, almost all hill fire incidents are caused by human negligence. As stated in its website, improper disposal of matches and cigarette butts is a cause of hill fire;

(b) ***Source of littering.*** Cigarette butts could be a source of littering, particularly in country parks where litter bins and ashtrays are not conveniently available; and

(c) ***Public nuisance.*** Many visitors are driven to visit country parks for the clean fresh air (see para. 1.10). Smoking could be a nuisance to visitors and might attract their complaints.

Note 23: *The only exception is the Hong Kong Wetland Park, a special area. Soon after the opening of the Park in May 2006, there were media reports about visitors smoking and littering inside. In October 2006, the Park was designated as a statutory no smoking area under the Smoking (Public Health) Ordinance (Cap. 371).*

2.38 In this connection, Audit noted that there had been discussions in LegCo about whether smoking ban should be applied in country parks. In March 2006, in relation to the deliberation of the amendments to the Smoking (Public Health) Ordinance (Cap. 371), LegCo was informed that enforcement of smoking ban was likely to be a problem given the vast space in country parks (Note 24). In October 2006, LegCo was further informed that there were reservations about whether tobacco control should be proceeded so quickly, and that it was not proposed to designate all country parks as no smoking areas.

2.39 Audit notes that it has been seven years since the issue was discussed in 2006. Audit research shows that some overseas countries have recently stepped up smoking restrictions in their country parks (Note 25). There is a need for the AFCD to keep in view the need to impose smoking restrictions on country parks (e.g. during fire seasons, and on certain high-risk country park areas) having regard to relevant factors (see para. 2.37).

2.40 Upon enquiry, the AFCD informed Audit in August 2013 that according to its records, smoking was not a major fire hazard in country parks. Audit reviewed AFCD records and noted that, of the 79 incidents of hill fire in country parks from 2010-11 to 2012-13, the cause of hill fire was actually unknown in 75 (95%) incidents. In fact, the tragic hill fire of 1996 at Pat Sin Leng of the Plover Cove Country Park was found by the Coroner's Court to be caused by smoking.

Audit recommendations

2.41 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

Note 24: *In March 2006, the then Health, Welfare and Food Bureau also informed LegCo that because of the nature of country parks, smoke from tobacco products or any pollution could be much better diluted there than in densely populated areas. Moreover, individuals in country parks rarely needed to stay in close proximity of each other.*

Note 25: *For example, starting from January 2013, smoking is prohibited in all the 21 national parks in the Republic of Korea. In the USA, smoking is prohibited in certain national parks when the weather is hot and dry.*

(a) **keep in view the advance in technology for automated fire surveillance systems and their use in the Mainland and overseas, with a view to exploring the feasibility of applying the technology in Hong Kong; and**

(b) **examine the desirability of prohibiting smoking (or restricting smoking only to designated areas) in country parks, having regard to the need for further reducing fire hazard and the need for better conserving country parks.**

Response from the Administration

2.42 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations. He has also said that the AFCD will continue to keep in view the latest development in technology of automated hill-fire monitoring systems and explore the feasibility of applying such technology in country parks.

PART 3: REGULATING INCOMPATIBLE DEVELOPMENTS

3.1 This PART examines the protection of country parks through regulating incompatible developments, focusing on the following areas:

(a) protection of enclaves (paras. 3.2 to 3.25);

(b) development on private land within country parks (paras. 3.26 to 3.33); and

(c) public works projects in country parks (paras. 3.34 to 3.42).

Protection of enclaves

3.2 In some country parks, there are enclaves surrounded by or adjacent to the country parks (see para. 2.4). There are currently 77 enclaves covering a total area of some 2,000 ha. Not being part of country parks, enclaves are not protected by the Country Parks Ordinance against development activities which might be incompatible with the natural environment (incompatible developments), as well as against other possible eco-vandalism. The development of enclaves is mainly subject to the terms and conditions of the land leases, and if available, statutory plans under the Town Planning Ordinance (Cap. 131) such as OZPs (Note 26) or Development Permission Area (DPA) Plans (Note 27).

Note 26: *OZP is a kind of statutory plan prepared by the Town Planning Board under the Town Planning Ordinance. It is basically a plan that shows the land-use zonings and major road systems of individual planning scheme areas. Each plan is accompanied by a Schedule of Notes which shows for a particular zone the uses always permitted and uses that would require permission from the Town Planning Board upon application.*

Note 27: *DPA Plan is prepared for an area not previously covered by OZP. Usually, due to the relatively short time for preparation, the land use information shown on a DPA Plan is generally not as detailed as on an OZP. Such Plan provides planning guidance and serves as a basis for development control within the plan area. It will only be effective for three years from the date of publication (may be extended for up to one year), and will be replaced by OZP within the period if it is intended that land use control is to be maintained under the Town Planning Ordinance.*

Government actions to regulate land use in enclaves

3.3 In June 2010, the AFCD received public complaints about excavation works on both private land and government land at Sai Wan, an enclave at the Sai Kung East Country Park. Excavators and some machinery were found on the site, and signs of soil excavation, formation of ponds, land levelling and turfing works were noted. While it had a high landscape value, Sai Wan was not covered by any statutory plans for land use control. The Government looked into the matter, and shared the public concern about the need to provide necessary planning control on the site and prevent it from being used for incompatible purposes.

3.4 The complaints about development at Sai Wan highlighted the need to take prompt action to regulate land use in enclaves. As at 2010, of the 77 enclaves (see para. 3.2), 23 had been covered by OZPs between 1980 and 2009 (see Appendix E). However, for the remaining 54 enclaves (i.e. 77 less 23), no statutory plans had been drawn up (see Appendix F). In August 2010, the PlanD prepared a DPA Plan covering Sai Wan for immediate protection from unauthorised development. In October 2010, the Chief Executive stated in his 2010-11 Policy Address that the 54 enclaves would either be incorporated into country parks, or have their proper uses determined through statutory planning (i.e. through the preparation of DPA Plans and subsequently OZPs).

3.5 In taking forward this initiative, the AFCD and the PlanD, having regard to relevant factors, made an assessment of the situation of each enclave. Enclaves under immediate development threats were to receive priority attention (priority sites). In determining whether enclaves could be incorporated into country parks or were to be covered by statutory plans, such factors as accessibility of the sites and their immediate development threats, conservation value, landscape and aesthetic value, geographical locations, and existing scale of human settlements were relevant. In general, for enclaves which were subject to imminent development threat, the DPA Plan would serve as a stopgap measure.

3.6 In October 2010, the Administration considered the assessment and decided that the following protective measures were to be taken on the 54 enclaves:

(a) 27 enclaves were to be covered by statutory plans;

(b) 2 enclaves were to be covered by DPA Plans and then incorporated into country parks (Note 28); and

(c) 25 enclaves were to be incorporated into country parks.

3.7 The AFCD would follow up the enclaves for incorporation into country parks, which would require invoking the designation process under the Country Parks Ordinance (Note 29). The PlanD would follow up the enclaves to be covered by statutory plans by preparing DPA Plans and OZPs. Table 2 summarises the arrangements of October 2010.

Note 28: *One of these enclaves was Sai Wan. A DPA Plan for Sai Wan was prepared in August 2010 (see para. 3.4).*

Note 29: *To incorporate an enclave into an existing country park, the boundaries of the country park would be adjusted. The areas within the new boundaries would be designated as a country park pursuant to the Country Parks Ordinance.*

Table 2

Protective measures planned for 54 enclaves
(October 2010)

Protective measure	No. of enclaves	Department responsible for taking follow-up action	
		PlanD (No. of enclaves)	AFCD (No. of enclaves)
Preparing DPA Plans and OZPs	27	29	27
Preparing DPA Plans, followed by incorporation into country parks	2 (Note)		
Incorporating into country parks	25		
Overall	54	29	27

Source: *Audit analysis of AFCD and PlanD records*

Note: *For these two enclaves, DPA Plans were to be prepared by the PlanD, and actions to incorporate them into country parks were to be taken by the AFCD.*

3.8 In April 2013, in response to an enquiry of a LegCo Member, the PlanD said that it was the Government's target to complete the preparation of DPA Plans for the relevant enclaves in 2013-14.

Progress in implementing protective measures

3.9 Since October 2010, the AFCD and the PlanD had initiated actions to implement the protective measures. As at June 2013, the two departments had taken the following actions:

(a) ***PlanD.*** Of the 29 enclaves concerned (see Table 2), statutory planning process had been initiated for 23 (79%) enclaves with DPA Plans prepared (Note 30). Details are as follows:

(i) 2 enclaves covered by DPA Plans to be followed by incorporation into country parks; and

(ii) 21 of the 27 enclaves covered by DPA Plans to be followed by OZPs; and

(b) ***AFCD.*** Designation process had been initiated for 3 of the 27 enclaves (see Table 2) for incorporation into country parks. Details are as follows:

(i) for 3 (11%) enclaves (namely Sai Wan, Kam Shan and Yuen Tun), the designation process had commenced. The designation was still in progress; and

(ii) for 24 (89%) enclaves, the designation process had not yet commenced.

3.10 As at June 2013, about three years had elapsed since the October 2010 arrangements (see para. 3.6), the AFCD had only implemented measures for protecting 3 enclaves. The AFCD's progress in the incorporation of the 27 enclaves into country parks was not entirely satisfactory. Upon enquiry, the AFCD informed Audit in August 2013 that:

(a) the number of enclaves to be incorporated into country parks was only based on a preliminary assessment (see para. 3.5). The identified enclaves were subject to detailed assessment on their suitability for designation as country parks. In fact, it was the AFCD's intention to assess all the 54 enclaves to identify suitable ones for incorporation into country parks;

Note 30: *Besides these 23 enclaves, one of the DPA Plans also covered another enclave which, according to the arrangements of October 2010, was not to be so protected. This enclave immediately adjoined another enclave that the PlanD needed to follow up. In order not to leave an adjoining enclave without statutory protection, the PlanD incorporated both enclaves into the DPA Plan.*

(b) to allow enclaves (with private land) to be incorporated into country parks, the principles and criteria for designation of country parks needed to be revised (see also Note 12 to para. 2.4). The revision was completed in May 2011 (see also para. 5.5(b));

(c) in view of the change of the policy for designation of country parks (see (b) above), consultation with stakeholders was necessary to avoid possible legal disputes. For the proposed incorporation of the three enclaves (namely, Sai Wan, Kam Shan and Yuen Tun) into their respective country parks, the AFCD had conducted consultation sessions to solicit views from all major local communities since June 2011; and

(d) the AFCD would continue to assess the suitability of the other 51 enclaves for designation as country parks.

3.11 As for the PlanD, as at June 2013, DPA Plans had been prepared for 23 (79%) of the 29 enclaves, leaving 6 enclaves to be dealt with. Upon enquiry, the PlanD informed Audit in August 2013 that the position had been kept in view all along, as follows:

(a) the making of DPA Plans and subsequent replacement by OZPs involved very lengthy procedures and was subject to tight statutory timeline as laid down in the Town Planning Ordinance;

(b) DPA Plans would be prepared for the remaining 6 enclaves within 2013-14; and

(c) OZPs would be prepared to replace the relevant DPA Plans before their expiry. In particular, the preparation work for the first batch of replacement OZPs was on schedule.

Many enclaves remained unprotected

3.12 As at June 2013, subsequent to the October 2010 arrangements, a total of 26 enclaves had been covered by different protective measures taken by the AFCD and the PlanD (see Table 3).

Table 3

Protective measures taken on enclaves
(June 2013)

No. of enclaves	Action taken for the enclaves	
	Covered by DPA Plan	**Undergoing the designation process for country parks (Note)**
23	✓	
2		✓
1	✓	✓
Total: 26	Covered by DPA Plans and/or undergoing the designation process	

Source: *Audit analysis of AFCD and PlanD records*

Note: *Draft maps of the proposed country parks (which included the enclaves) had been gazetted pursuant to the Country Parks Ordinance. This already rendered certain protection to the enclaves. According to the Ordinance, without the prior approval of the Country and Marine Parks Authority, no new development shall be carried out within the area of the proposed country parks.*

3.13 However, as at June 2013, 28 enclaves (i.e. 54 less 26) were not covered by any protective measures. The number of unprotected enclaves was considerable, representing 52% of the 54 enclaves to be dealt with. According to the October 2010 arrangements, 6 of the 28 unprotected enclaves were to be covered by DPA Plans by the PlanD (see para. 3.11). The remaining 22 unprotected enclaves (including two priority sites considered to be under immediate development threats — see paras. 3.3 to 3.5) were to be incorporated into country parks by the AFCD. Case 1 is an example showing that the unprotected enclaves could be at risk of possible incompatible developments.

Case 1

Excavation and tree felling in an unprotected enclave

1. Tsing Fai Tong is an enclave in the Tai Lam Country Park, which should be followed up by the AFCD according to the October 2010 arrangements. It is also one of the 28 enclaves not yet covered by protective measures (see para. 3.13). The enclave comprises both private land and government land.

2. In December 2012, AFCD patrol staff detected clearance of vegetation in the enclave (about 30 trees were felled). The AFCD informed the PlanD and the LandsD of the incident. The PlanD replied that as the affected area was not covered by any statutory plans, no enforcement action could be taken under the Town Planning Ordinance. According to the LandsD, there was no tree preservation clause for the private land concerned. Thus, tree felling on the private land did not constitute a lease breach.

3. In January 2013, AFCD patrol staff detected excavation work in the enclave. A new trench was formed at the edge of a slope. The AFCD informed the PlanD and the LandsD of the incident. The LandsD replied in February 2013 that the matter was receiving attention.

4. In March 2013, AFCD patrol staff detected further excavation and tree felling in the enclave. In April 2013, the LandsD informed the AFCD that it would take land control action against unauthorised excavation on the unleased government land. In May 2013, the LandsD erected warning signs on the government land in the enclave to prevent further land excavation. The LandsD did not find further signs of excavation afterwards.

5. In July 2013, the AFCD found that there were no substantial changes in the site conditions.

Audit comments

6. In the absence of any protective measures for this enclave, its land use was not adequately regulated. Little action can be taken against possible incompatible developments in the enclave. The AFCD, the PlanD and the LandsD should continue to monitor any development activities in this enclave and consider taking prompt action for protecting the site.

Source: AFCD records

3.14 Case 1 shows that some of the 28 unprotected enclaves could be subject to imminent development threats. There is a need to consider taking prompt actions to cover these 28 unprotected enclaves against possible incompatible developments.

Measures needed for addressing imminent risks

3.15 Of the 28 unprotected enclaves, 22 were to be incorporated into country parks by the AFCD (see para. 3.13). This would require seeking the Country and Marine Parks Board's endorsement of the suitability of the enclaves for designation as country parks, as well as invoking the designation process for country parks under the Country Parks Ordinance (see para. 3.7). The major statutory procedures involved are shown at Appendix G.

3.16 Audit analysed the time taken in recent years to gazette draft maps (see item 3 of Appendix G) of country parks for the three enclaves, namely, Sai Wan, Kam Shan and Yuen Tun. Gazetting the draft maps was an integral part of the designation process under the Country Parks Ordinance (Note 31). Table 4 shows that the time required to gazette the draft maps was about 6 to 8 months after the Country and Marine Parks Board had endorsed the suitability of the enclaves for designation as country parks (Note 32).

Note 31: *According to the Country Parks Ordinance, after the draft maps are gazetted, no new development shall be carried out within the area of the proposed country parks without the prior approval of the AFCD.*

Note 32: *In practice, after the Board's endorsement and necessary consultations with stakeholders, approval of the Chief Executive in Council on the gazettal of the draft maps would be sought.*

Table 4

Recent gazettals of draft maps of proposed country parks (2012)

Enclave	Endorsement of the suitability of the site by the Country and Marine Parks Board	Gazettal of the draft map	Time elapsed
Sai Wan	February 2012	October 2012	8 months
Kam Shan	April 2012	October 2012	6 months
Yuen Tun	April 2012	October 2012	6 months

Source: AFCD records

3.17 Moreover, Audit noted that stakeholders (e.g. villagers) had raised objections to the designation of the enclaves in Table 4. As at June 2013, the designations were not completed. About eight months had elapsed since the draft maps were gazetted.

3.18 Upon enquiry, the AFCD informed Audit in August and September 2013 that:

(a) the Country Parks Ordinance has detailed provisions for the designation of a country park. The designation process would inherently take a long time. The AFCD had all along followed the statutory requirements (see Appendix G) in the process of country park designation, which was a careful deliberation process;

(b) the AFCD had conducted consultation sessions to solicit views from all major local communities since June 2011. From February to July 2012, the parties consulted included the Sai Kung District Council, the Sha Tin District Council and the Tsuen Wan District Council;

(c) in August 2012, the Country and Marine Parks Board endorsed invoking the statutory procedures under the Country Parks Ordinance;

(d) the Chief Executive in Council's approval was obtained in October 2012 and the draft maps were gazetted for public inspection. Any person aggrieved by any of the draft maps might submit a written statement of objection;

(e) according to the Country Parks Ordinance, the draft maps, together with any objections received and amendments made, had to be submitted to the Chief Executive in Council for approval within six months from the last day of the period during which objections might be lodged. The Authority had due regard to relevant statutory requirements and submitted the draft maps for approval in less than four months;

(f) the designation process had come to the last step. The Designation Order for incorporating the three enclaves into country parks would be tabled at LegCo for negative vetting; and

(g) regarding the other enclaves, their incorporation into country parks would be considered and pursued by batches.

3.19 While noting the AFCD's explanations for the time (6 to 8 months) required for necessary work before gazetting of draft maps, Audit considers that the AFCD needs to explore, in collaboration with the relevant departments, other more timely and effective measures for addressing the imminent threats of possible incompatible developments in some of the enclaves.

Other measures for protecting enclaves

3.20 Apart from incorporating enclaves into country parks, the AFCD has also implemented measures through the Management Agreement (MA) Scheme under its New Nature Conservation Policy to conserve enclaves, as follows:

(a) the MA Scheme is an initiative to encourage the participation of landowners, non-profit-making organisations and the private sector in conservation of ecologically important sites;

(b) funding support would be granted to enable non-profit-making organisations to enter into management agreements with landowners, who would receive financial incentives (e.g. rentals) in exchange for their cooperation (e.g. management rights over the land) in enhancing conservation of the sites concerned; and

(c) in 2004, a total of 12 sites (8 of which included enclaves) were identified with priority under the New Nature Conservation Policy. These sites and the related enclaves were covered by the MA Scheme. Since June 2011, the scope of the MA Scheme has been extended to cover all enclaves as well as private land within country parks.

3.21 Audit noted that, up to June 2013, no conservation projects had been implemented at enclaves under the MA Scheme. There is a need to further promote the use of the MA Scheme for conserving enclaves.

Audit recommendations

3.22 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

(a) **critically review the progress made by the AFCD in protecting enclaves by incorporating them into country parks, with a view to devising a more effective strategy for incorporating the 27 enclaves into country parks in accordance with the October 2010 arrangements. In particular, the AFCD should:**

(i) **for the 3 enclaves with designation process initiated, take measure to ensure that the process is completed in a timely manner as intended; and**

(ii) **devise a timetable for designating the remaining 24 enclaves having regard to the need to give priority to enclaves identified to be under imminent development threats, including the priority sites identified in October 2010 (see paras. 3.3 to 3.5), and the enclave at Tsing Fai Tong with incompatible developments detected in early 2013;**

(b) **continue to monitor possible incompatible development activities at enclaves for necessary follow-up actions by relevant departments; and**

(c) **further promote the use of the MA Scheme for conserving enclaves.**

3.23 **Audit has also *recommended* that the Director of Planning should continue its efforts in protecting enclaves through statutory planning in accordance with the October 2010 arrangements.**

Response from the Administration

3.24 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations in paragraph 3.22. He has said that the AFCD will take follow-up actions to implement the recommendations. He has also said that the Country Parks (Designation) (Consolidation) (Amendment) Order 2013, which was for the purpose of incorporating the three enclaves into their respective country parks, was tabled at LegCo on 16 October 2013 for negative vetting.

3.25 The Director of Planning agrees with the audit recommendation in paragraph 3.23. He has said that the PlanD would continue its best efforts in protecting the enclaves through statutory planning in accordance with the October 2010 arrangements.

Development on private land within country parks

3.26 In designating country parks in the past, there were pre-existing private land lots and human settlements inside or adjacent to the proposed country park boundaries. Where the private land owners did not raise objection, the private land might be incorporated into the country parks (Note 33).

Note 33: *Private land, if any, inside or adjacent to special areas would not be incorporated into the special areas which comprise only government land.*

3.27 According to AFCD records, at present, there are some 19,000 lots of private land within country parks. Unlike enclaves which are outside the boundaries of country parks, these private land lots are part of country parks and are hence under the protection of the Country Parks Ordinance on land use control. If any use of these private land lots would substantially reduce the enjoyment and amenities of the country parks, the AFCD may request the LandsD to exercise the powers conferred by the Country Parks Ordinance to require such use be discontinued or modified (Note 34).

Need to take prompt enforcement action

3.28 According to the established practices between the AFCD and the LandsD, the AFCD is responsible for patrolling country parks and notifying the LandsD of suspected unauthorised developments so identified for necessary enforcement action. The LandsD has issued internal guidelines in this regard (see Appendix H). However, the coordination between the two departments was not always satisfactory. Case 2 shows an example.

Note 34: *The Country Parks and Special Areas Regulations also prohibit the construction or erection of any building, hut or shelter, or the excavation of any cave within a country park.*

Case 2

Suspected unauthorised columbarium works in private land within a country park

1. In November 2011, AFCD staff patrolled the Sai Kung West Country Park and found columbarium-related structures (i.e. trapezoid gravestones and an angel statue) on private land at Tsam Chuk Wan. The AFCD considered that the case was related to leased land, and requested the LandsD to take necessary enforcement action on the case. The LandsD inspected the site but could not find the gravestones and the statue.

2. From December 2011 to February 2012, the case was deliberated within the LandsD. Consideration was given to such matters as whether the gravestones and statue constituted structures not permitted under the lease.

3. In March 2012, the LandsD did not find sufficient evidence pointing to the erection of a columbarium on the site. The LandsD asked the AFCD to also take enforcement action on the case regarding other built structures found (e.g. brick walls).

4. In April 2012, the AFCD and the LandsD exchanged further correspondence about the case. The AFCD was informed that the LandsD would take necessary enforcement action if the lease conditions were breached by the land owners.

5. In late April 2012, the AFCD noted further erection of structures (e.g. a guard-house-like shelter) on the private land. The AFCD informed the LandsD of the new structures.

6. In May 2012, the LandsD received a press enquiry about the suspected columbarium on the private land. Upon further investigation, the LandsD confirmed that there was a substantial lease breach involving unauthorised development of a columbarium. The LandsD decided to take enforcement action and informed the AFCD of the decision.

7. In mid-May 2012, the LandsD issued warning letters to owners of the private land, and required that the structures be demolished. Eventually, the LandsD terminated the land lease in June 2012.

Source: LandsD and AFCD records

3.29 On handling unauthorised use of land in country parks, close liaison between the LandsD and the AFCD is important to ensure that prompt enforcement action is taken to address the problem at an early stage. Case 2 shows that there is room for further improvement in the coordination between the two departments.

Information on private land not updated promptly

3.30 The Cartographic Unit of the AFCD maintains details (e.g. lot number, location and area) of private land within country parks in a computer database. The data were obtained from the LandsD. Every two years, the AFCD conducts full-scale updating of private land details in the database. During the updating, the AFCD collects relevant details from the LandsD and uploads them into the database.

3.31 Audit noted that the AFCD database was normally only used for map-making. There is scope for the AFCD to make further use of the database to help enhance the patrol of country parks. For example, the AFCD may make reference to the private land details in the database when planning the coverage of foot beats for routine patrols (see para. 2.12). This can help further strengthen its monitoring of private land in country parks. However, since the database is currently updated once every two years, the information therein could be outdated in the interim. In this connection, Audit noted that the database was last updated in November 2011, which was almost two years ago.

Audit recommendations

3.32 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

(a) **in consultation with the Director of Lands, review the adequacy of the arrangements for following up unauthorised development on private land within country parks, taking account of the need for prompt action to contain the problem at an early stage;**

(b) **consider updating the database of private land in country parks more frequently; and**

(c) **consider making use of the database to help enhance the planning of foot beats for patrolling country parks.**

Response from the Administration

3.33 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations.

Public works projects in country parks

3.34 From time to time, works projects for the provision of public facilities (e.g. widening of roads and building of other infrastructures) may need to be carried out in country parks. These projects and the related works may not be entirely compatible with the country park objectives of nature conservation (incompatible projects), and could cause adverse impacts on the natural environment.

3.35 As the Country and Marine Parks Authority, the Director of Agriculture, Fisheries and Conservation will need to make his assessment to see whether agreement can be given for the public works projects (including incompatible projects) to be carried out in country parks. The agreement is normally given as an administrative arrangement, without the need to invoke any provisions of the Country Parks Ordinance. Upon completion of the works projects, the affected areas in the country parks would be restored and vegetated where appropriate.

Using country park area for landfill purposes

3.36 In 1991, the design stage of the South East New Territories (SENT) Landfill Project in Tseung Kwan O was underway. The then Director of Agriculture and Fisheries approved an encroachment of the Landfill onto a site of 18 ha in the nearby Clear Water Bay Country Park. A chronology of key events of the case is at Appendix I. The 18 ha of land, which was subsequently allocated to the EPD for operations of the SENT Landfill, remained part of the Clear Water Bay Country Park despite the fact that its use for landfill purposes was incompatible with the country park objectives of nature conservation.

3.37 In the 2000s, the SENT Landfill was to be extended. It was intended that another 5 ha of land in the Clear Water Bay Country Park would be used for the extension. Drawing on the experience of using the 18 ha country park area for

landfill purposes, the Country and Marine Parks Board considered that the proposed 5 ha site might not be available for public enjoyment for a very long time. Having also considered other relevant factors (Note 35), the proposed 5 ha site would need to be excised from the Clear Water Bay Country Park boundary. The EPD could then use the excised site for the proposed extension of the SENT Landfill. To give effect to the revised country park boundary, the Chief Executive in Council ordered in May 2010 that the map of the Clear Water Bay Country Park should be replaced by a new map pursuant to the provisions of the Country Parks Ordinance.

3.38 However, due to objection of LegCo, in January 2011 the excision was not pursued further and the EPD revised its landfill extension plan. A chronology of key events of the case is at Appendix J.

Returning the 18 ha of land to the AFCD

3.39 It is worth noting that in 1993 when the AFCD gave consent to the use of 18 ha of land by the EPD for landfill purposes, it was agreed that the site would be restored and returned to the AFCD after the closure of the SENT Landfill. However, at present, the SENT Landfill is still in operation (see Photograph 8) and further extension is being planned. There is no definite timeframe for the restoration and return of the 18 ha of land to the AFCD.

Note 35: *Other considerations included:*

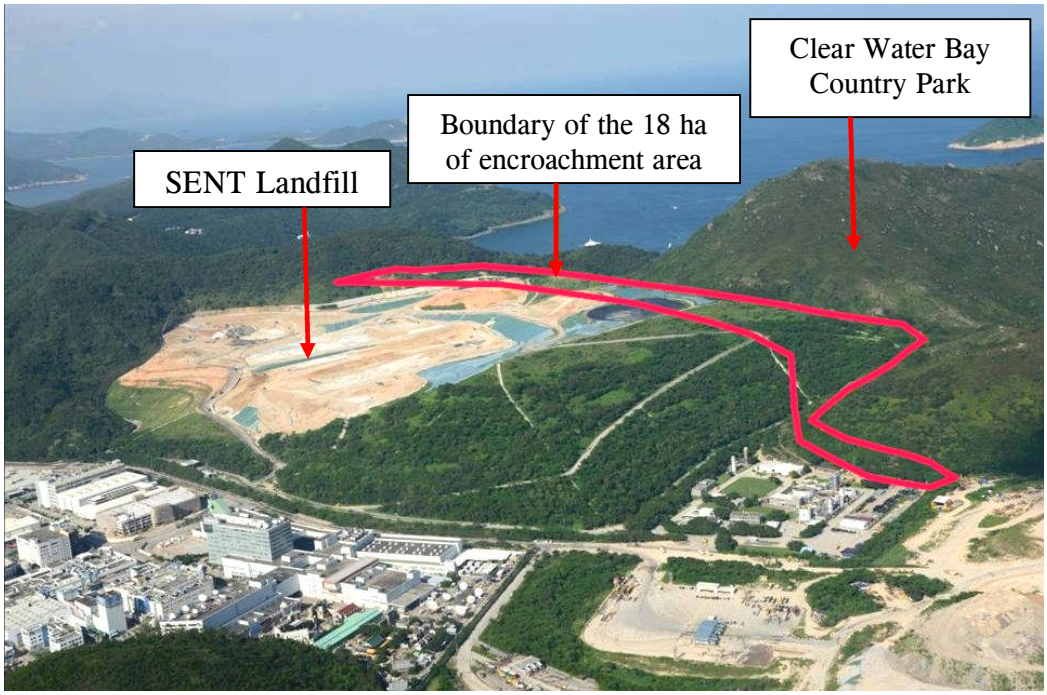
(a) using the site for extension of the SENT Landfill was an incompatible use of the Clear Water Bay Country Park;

(b) the ecological value of the affected land was low to moderate. There would be little deprivation of public enjoyment; and

(c) excision of the site (which would call for invoking statutory procedures) would be transparent as this would provide the public with a formal objection mechanism in relation to the intended use of the Clear Water Bay Country Park for landfill purposes.

Photograph 8

Encroachment of the SENT Landfill into the Clear Water Bay Country Park



Source: EPD records (photograph taken in June 2013)

3.40 A key objective of designating an area as a country park is nature conservation (see para. 1.4). Land that has already been used for landfill purposes may no longer be compatible with the country park objectives. There is a need to critically consider what remedial measures need to be taken for restoring the land so that it can be compatible with the natural environment of the country park.

Audit recommendations

3.41 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

(a) **follow up with the Director of Environmental Protection about the expected timeframe and the required restoration work for the return of the 18 ha of land in the Clear Water Bay Country Park to the AFCD; and**

(b) **closely monitor the impact of the landfill site on the Clear Water Bay Country Park, and take necessary remedial measures to protect the natural environment of the Country Park.**

Response from the Administration

3.42 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations.

PART 4: PUBLICITY AND EDUCATIONAL ACTIVITIES

4.1 This PART examines the AFCD's efforts in promoting conservation of country parks through publicity and educational activities. The following issues are discussed:

(a) school education programmes (paras. 4.2 to 4.13);

(b) publicity of keeping country parks clean (paras. 4.14 to 4.20); and

(c) publicity of the Hong Kong Geopark (paras. 4.21 to 4.36).

School education programmes

4.2 The AFCD's Country Parks Ranger Services Division (see Appendix C) is responsible for organising publicity activities on the promotion of nature appreciation and conservation in country parks. The activities include hiking, tree planting, and school education programmes. Target participants are students, teachers and the general public (particularly nature lovers). In 2012-13, free activities were organised for about 310,000 participants.

4.3 School education programmes are a key component of the AFCD's publicity activities. Of the 310,000 participants in publicity activities in 2012-13 (see para. 4.2), about 94,000 (30%) were students taking part in school education programmes. Many of these programmes (e.g. school guided eco-tours in geo-areas) were held at country parks. Some of them (i.e. school visit programmes — Note 36) were held at the participating schools. To join a school education programme, a school is normally required to submit an application to the AFCD. Acceptance of the application was subject to availability of places. Photograph 9 shows a school visit programme held at a primary school.

Note 36: *Under these programmes, visits were paid to the participating schools to promote nature conservation through such activities as booth games and presentations. The AFCD engaged contractors to conduct the school visits.*

Photograph 9

School visit programme held at a primary school

Source: AFCD records

Demand for school education programmes not adequately met

4.4 In 2012-13, the school education programmes comprised eight programmes. For seven of these programmes (see items 1 to 7 in Table 5 in para. 4.5), a school interested in joining a programme should submit an application before the intended date of the activity. The seven programmes had in total some 39,000 participants in 2012-13. As for the remaining programme, it comprised interpretation sessions conducted according to a schedule at an education centre of a special area. These sessions provided information about conservation and relevant exhibits at the centre. Prior application for participation in an interpretation session was not required. Interested schools could join such a session when it started. This programme had some 55,000 participants in 2012-13.

4.5 Audit reviewed the applications for school education programmes (excluding interpretation sessions which did not require prior applications) received by the AFCD in 2012-13. Table 5 shows the results of the applications. Audit noted that of a total of 717 applications received, 70 (10%) were rejected by the AFCD. Many of the rejected applications were related to school visit programmes for kindergartens. In 2012-13, of a total of 134 applications received from kindergartens for school visit programmes, 37 (28%) were rejected. Upon enquiry,

the AFCD informed Audit in August 2013 that the applications were rejected mainly because the time slots requested by the schools were unavailable (e.g. time slots already booked by other schools).

Table 5

Applications for school education programmes
(2012-13)

Item	Programme (Note)	Application received		Application accepted		Application rejected	
		(No.)	(%)	(No.)	(%)	(No.)	(%)
Programmes held at schools							
1	School visit programmes for kindergartens	134	100%	97	72%	37	28%
2	School visit programmes for primary schools	71	100%	68	96%	3	4%
	Total	205	100%	165	80%	40	20%
Programmes held at country parks							
3	Country parks orienteering	55	100%	47	85%	8	15%
4	School guided eco-tours in geo-areas	97	100%	83	86%	14	14%
5	School education programmes at Country Park Visitor Centres	170	100%	162	95%	8	5%
6	Educational guided field studies for secondary and senior primary schools	150	100%	150	100%	0	0%
7	Rock classroom	40	100%	40	100%	0	0%
	Total	512	100%	482	94%	30	6%
	Overall	717	100%	647	90%	70	10%

Source: *Audit analysis of AFCD records*

Note: *Interpretation sessions which did not require prior applications were excluded (see para. 4.4).*

4.6 It generally takes a long time and strenuous efforts to nurture a culture of nature conservation in the community. School education programmes are an effective means to nurture such a culture among younger students. Efforts to promote nature conservation among young students will no doubt benefit our future generations. Audit noted that the 2012 Survey Report (see para. 1.10) which was published in June 2013 had also identified school education programmes as one of the AFCD's priority areas for resource allocation (Note 37). In this connection, Audit noted that the school visit programmes were generally well received by participants (Note 38). Audit considers that more can be done to strengthen and promote the school visit programmes (especially programmes for kindergartens).

Scope for conducting more school visits

4.7 School visit programmes were an effective means of disseminating conservation messages to a large number of students. In 2012-13, the school visit programmes reached a total of 28,598 participants, more students than other education programmes organised for schools (Note 39). Audit considers that there

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Note 37: *The 2012 Survey aimed to find out areas for improvement for country parks, and identified resources allocation priority within the AFCD. In the Survey Report, it was noted that "nature conservation activities and education activities were relatively important with high priority for further improvement", and that the AFCD could focus on conveying the message of nature conservation through school activities.*

Note 38: *Participating schools were required to rate the school visit programmes on a scale of five grades (i.e. "very good", "good", "fair", "bad" and "very bad"). In 2012-13, 57% of the responding primary schools and 30% of the responding kindergartens rated the programmes "very good". The rest of the responding primary schools and kindergartens rated the programmes either "good" or "fair".*

Note 39: *The number of participants in programmes referred to in items 3 to 7 of Table 5 totalled 10,894. The figure did not include participants in interpretation sessions due to the different nature of the sessions. According to the AFCD, an interpretation session only lasted for about 15 minutes, differing from other school education programmes which were more in-depth (e.g. at least a 2-hour duration for a school visit).*

is room for the AFCD to leverage more on school visit programmes to convey conservation messages to more students. For example, school visit programmes are currently only available for primary schools and kindergartens, but not for secondary schools. The AFCD may consider extending the school visit programmes to secondary schools.

Promoting the use of the education kit for secondary schools

4.8 To supplement the school education programmes, in October 2010, the AFCD first launched an education kit for use by secondary schools (Note 40). The kit aimed to help teachers promote nature conservation at schools. The AFCD updated the kit from time to time, and posted the updated kit on the AFCD website for downloading by teachers (Note 41). The AFCD monitored the Internet hit rate of the kit (i.e. the number of visits to the website on which the kit was posted), which was used as an indicator of its utilisation. Table 6 shows the quarterly hit rate of the education kit for the period April 2011 to June 2013.

Note 40: *The education kit was entitled "Hong Kong Country Parks Education Kit for Secondary Schools". It provided reference materials (e.g. suggested teaching activities and worksheets) in relation to nature conservation in Hong Kong.*

Note 41: *The downloading of the education kit was password-controlled. Only registered users (mainly teaching staff of secondary schools) can access the education kit.*

Table 6

Quarterly hit rate of the education kit
(April 2011 to June 2013)

Period	Number of visits to the education kit website
April to June 2011	18,385
July to September 2011	15,861
October to December 2011	13,646
January to March 2012	20,237
April to June 2012	10,116
July to September 2012	6,995
October to December 2012	4,606
January to March 2013	6,143
April to June 2013	5,368

Source: AFCD records

4.9 Table 6 shows that there was a general decreasing trend in the hit rate of the education kit starting from the quarter January to March 2012. Upon enquiry, the AFCD informed Audit in August 2013 that when teachers visited the education kit website, they might download worksheets from the website. After they had familiarised themselves with the website or downloaded the worksheets, they might explore the website less frequently, thus resulting in a reduction of the hit rate. Audit however noted that the AFCD had not ascertained the number of secondary schools which had adopted the education kit for use in teaching nature conservation. As the education kit has been launched for some three years, the AFCD may consider conducting an evaluation of the effectiveness of the kit in promoting nature conservation at secondary schools.

4.10 Audit also noted that so far only two user training sessions were conducted in October 2010 when the education kit was first launched. The AFCD

co-organised the training sessions with the Education Bureau (EDB) and a total of 51 teachers and school heads attended the training. The number of attendees appeared to be small in comparison with over 500 secondary schools in Hong Kong and the large number of users as evidenced by the hit rate of the kit. Since then, no user training sessions or refresher workshops had been organised. In order to encourage more users to adopt the kit for teaching nature conservation at secondary schools, the AFCD needs to consider organising regular training sessions (e.g. induction training and refresher workshops) for them.

Audit recommendations

4.11 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

(a) **take measures, including redeployment of resources within the AFCD, to further enhance the school education programmes for promoting nature conservation and appreciation. For example, the AFCD may consider:**

(i) **conducting more school visits under the school education programmes so as to reach out to more students; and**

(ii) **extending the school visit programmes also to secondary schools;**

(b) **conduct an evaluation of the education kit for secondary schools. This should include, for example:**

(i) **ascertaining the number of secondary schools which have adopted the education kit for use in teaching nature conservation; and**

(ii) **assessing teachers' training needs for using the education kit; and**

(c) **having regard to the evaluation, take steps to ensure that adequate support is provided to users of the education kit for secondary schools (e.g. organising induction sessions and refresher workshops for teachers on a periodic basis).**

Response from the Administration

4.12 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations.

4.13 The Secretary for Education has said that the AFCD has long been a close partner of the EDB in the promotion of the protection and conservation of country parks. The EDB and the AFCD have co-organised training sessions for teachers and school heads (see para. 4.10). As these programmes benefit the professional development of teachers, the EDB encourages their participation that counts towards their Continuing Professional Development hours.

Publicity of keeping country parks clean

4.14 Every year, about 3,000 to 4,000 tonnes (Note 42) of litter is collected from country parks. Apart from prosecuting littering cases during patrolling and law enforcement (see para. 2.3), the AFCD has taken measures to publicise the need to keep country parks clean. In particular, posters are displayed at recreational sites reminding visitors to keep country parks clean, and signs are erected at entrances to and along hiking trails advising visitors to take their litter away with them (or take their litter home) for proper disposal (see Photographs 10 and 11). Participants in school education programmes and other publicity activities are also advised of the need for keeping country parks clean.

Note 42: *One tonne is equal to 1,000 kilogrammes (kg).*

Photographs 10 and 11

Examples of signs advising visitors to take their litter away with them for proper disposal

Photograph 10

A sign in Country Park A

Photograph 11

A sign in Country Park B

Source: Photographs taken by Audit in May and July 2013

4.15 Table 7 shows an analysis of the amount of litter collected from country parks in the past 10 years.

Table 7

Litter collected from country parks
(2003-04 to 2012-13)

Year	Litter collected (a) (tonnes)	No. of visitors (b) (million)	Litter per visitor (c) = (a) × 1,000 ÷ (b) (kg per visitor)
2003-04	4,100	12.1	0.34
2004-05	3,700	12.2	0.30
2005-06	3,200	12.2	0.26
2006-07	3,200	12.2	0.26
2007-08	3,100	12.6	0.25
2008-09	2,900	12.4	0.23
2009-10	3,400	13.6	0.25
2010-11	3,400	13.2	0.26
2011-12	3,800	13.4	0.28
2012-13	3,700	12.7	0.29

Source: Audit analysis of AFCD records

Need to step up publicity efforts

4.16 As can be seen from Table 7, in the past 10 years, the amount of litter collected from country parks decreased by about 10% from 4,100 tonnes in 2003-04 to 3,700 tonnes in 2012-13. However, more recently (since 2008-09), there was a discernible trend that the amount of litter was on the rise again, increasing from 2,900 tonnes in 2008-09 by 28% (or 800 tonnes) to 3,700 tonnes in 2012-13. In particular, the amount of litter disposed of by individual visitors increased by 26% from 0.23 to 0.29 kg per visitor during the period. This is a cause for concern as it appears that more litter has been generated by each visitor, notwithstanding the AFCD's efforts in promoting the message of keeping country parks clean.

Publicity and educational activities

4.17 Upon enquiry, the AFCD informed Audit in August 2013 that:

(a) in recent years, the AFCD had enhanced its efforts in collecting coastal garbage being washed ashore onto country parks. This might have contributed partly to the increase in the amount of litter collected from country parks. However, there were no statistics of the coastal garbage so collected;

(b) based on the experience in country park management, most litter was collected at recreational sites (e.g. barbecue sites and picnic sites). The current trend was to promote waste reduction through the three "Rs" of waste management, namely, reducing, reusing and recycling; and

(c) the Government already had a few announcements in the public interest (APIs) on radio and television to promote waste reduction (although these APIs were not specifically related to the theme of keeping country parks clean).

4.18 While most of the litter might have been disposed of by visitors at the right places (e.g. litter bins and litter stockades), the large amount of litter in country parks (e.g. at recreational sites — see para. 4.17(b)) would undermine their aesthetic quality and good environment which is the main reason for people visiting these places (see para. 1.10). Moreover, litter handling has also created a considerable workload for AFCD staff. There is a need for the AFCD to step up its publicity to help further promote keeping country parks clean. In this connection, Audit noted that:

(a) although publicity of keeping country parks clean had been incorporated into the school education programmes (see para. 4.14), there was scope for the AFCD to further enhance these programmes by conducting more school visits (see para. 4.7); and

(b) the AFCD had not publicised keeping country parks clean (e.g. through waste reduction) by broadcasting APIs on radio and television.

Audit recommendations

4.19 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

(a) **review the effectiveness of the AFCD's publicity efforts in promoting the message of keeping country parks clean; and**

(b) **take measures to step up the AFCD's publicity measures (e.g. broadcasting APIs on radio and television) to better promote waste reduction at country parks.**

Response from the Administration

4.20 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations.

Publicity of the Hong Kong Geopark

4.21 The Hong Kong Geopark is a member of the Global Geoparks Network which is supported by the United Nations Educational, Scientific and Cultural Organisation (see para. 1.6). The purposes of establishing the Hong Kong Geopark are to:

(a) protect precious geological heritage;

(b) spread knowledge of earth science; and

(c) promote sustainable social and economic development through geo-tourism (Note 43).

Note 43: *Geo-tourism generally refers to tourism involving travel to areas with specific focuses on landscape and geology.*

Attaining these Geopark objectives is a prerequisite for maintaining the membership status of the Global Geoparks Network.

4.22 In pursuit of the Geopark objectives, the AFCD's Geopark Division carries out publicity and educational work (e.g. promoting earth science to students through seminars, liaising with members of the Global Geoparks Network, etc.), and enlists the support of various parties including non-governmental organisations (NGOs) and the private sector. The Geopark Division, headed by a Senior Geopark Officer, has a strength of nine staff (see Appendix C). In 2012-13, the participating parties carried out various activities to help publicise the Geopark and promote geo-tourism, including:

(a) ***Geo-tours.*** Three NGOs provided fee-paying guided tours for visitors in different geo-areas;

(b) ***Geo-gourmets.*** Five local restaurants included "geological" dishes (Note 44) in their menus to enrich customers' geopark experience; and

(c) ***Geopark Hotel.*** The AFCD named a hotel on the Hong Kong Island the "Hong Kong Geopark Hotel". The hotel was committed to promoting the geopark concept in delivering its services. The lobby and selected rooms of the hotel were decorated with the geopark theme. Geopark videos were played in the hotel. Geopark guided tours were also available to hotel guests.

The participating parties' publicity and promotional activities would also raise people's awareness of the need to preserve the Hong Kong Geopark.

Promoting eco-tourism in Hong Kong

4.23 Eco-tourism generally refers to tourism involving travel to areas of natural or ecological interest for the purpose of observing wildlife and learning about the environment. With 40% of the territory protected as country parks (see para. 1.5) coupled with its richness of biodiversity (both animal and plant species)

Note 44: *This refers to the use of attractive names (e.g. "crispy dinosaur eggs" for deep-fried fresh scallops) for the dishes being served.*

and array of landforms (see para. 1.3), Hong Kong is well-placed to develop eco-tourism which offers the much-needed diversification beyond its main tourist attractions of shopping and dining in the tourism industry. Audit notes that there are a number of promotional activities of eco-tourism in Hong Kong and more specifically of the Hong Kong Geopark, and considers that special attention should be drawn to a number of promotional efforts (see paras. 4.24 to 4.34).

Unclear role of the AFCD

4.24 Audit reviewed the collaboration between the AFCD and the participating parties in 2012-13. Audit noted that in general, the participating parties' publicity and promotional activities did not receive any funding from the AFCD. These activities, particularly those run by the private sector (i.e. other than NGOs), were generally commercial in nature (e.g. operating the Geopark Hotel). The AFCD mainly played the role of a facilitator (e.g. providing training, liaising with different parties and attending publicity events), and did not take part in the business operation.

4.25 However, in spite of the AFCD's limited role, the AFCD has permitted the description of such collaboration as a partnership arrangement. Case 3 shows an example.

Case 3

AFCD's publicity of its collaboration with the Geopark Hotel

1. The AFCD publicised its collaboration with Hotel A (i.e. the Geopark Hotel) on the Hong Kong Geopark website (a government website), and stated that Hotel A:

> "*has made a partnership arrangement with Hong Kong Geopark to be the first Hong Kong Geopark Hotel. The Hotel is committed to geo-conservation and promotion of geopark concept*".

2. As a matter of fact, the AFCD did not take part in hotel operation, nor did it intend to be a business partner of Hotel A. There was no written agreement or formal correspondence between the AFCD and Hotel A to specify their respective duties and responsibilities.

Source: AFCD records

4.26 Audit is concerned that without a written agreement or memorandum to clearly define its role and responsibility, the AFCD's role could be misconstrued. In this regard, it is important to keep proper documentation of the formal correspondence with the participating parties in the collaboration.

4.27 Upon enquiry, the AFCD informed Audit in August 2013 that it maintained email records of discussions during the early stage of collaboration (i.e. 2009 to 2011). Due to resource constraints and the large number of interested parties, a complete record of all the meeting details was not kept. The AFCD considered that all the participating parties should be well aware of their roles and responsibilities. The AFCD did not have written contracts with any of them.

4.28 Audit considers that for the avoidance of doubt, it is preferable for the AFCD to enter into formal agreements with the participating parties, clearly specifying their respective duties and responsibilities in the collaboration.

Inadequate transparency in the recruitment of Geopark partners

4.29 While the Geopark "partners" (i.e. parties participating in the Hong Kong Geopark's publicity and promotional activities) did not receive any funding from the AFCD, they were entitled to use the Geopark logos (see Figure 2) for promoting their related services/products.

Figure 2

Logos for use by Geopark partners
(2012-13)

Source: AFCD records

4.30 Audit noted that it was not the practice of the AFCD to recruit Geopark partners in an open and transparent manner. Moreover, the eligibility criteria for recruitment were not laid down. As in the case of the collaboration with Hotel A (see Case 3), no formal documentation of the AFCD's recruitment of partners was available for audit examination. Upon enquiry, the AFCD informed Audit in September 2013 that:

(a) while not clearly laid down, in practice, the recruitment of Geopark partners was based on a number of principles, as follows:

(i) the applicant's initiatives or activities were consistent with the core objectives of the Hong Kong Geopark on the aspects of promoting sustainable geo-tourism and science popularisation;

(ii) the applicants' objectives and scope of work were clearly stated;

(iii) the collaboration would bring media exposure and benefits to the public image of the Hong Kong Geopark, and will help promote geo-conservation; and

(iv) the collaboration would provide sustainable benefits to the local business or community;

(b) Geopark partners could only use the Geopark logos for the purpose of promoting the Geopark in the course of their business. The AFCD had the right to terminate relationships that did not meet its needs and requirements; and

(c) many interested parties approached the AFCD direct to explore collaboration opportunities. According to the Global Geoparks Network principles, the AFCD welcomed all sorts of and as many as possible organisations to be Geopark partners. However, the recruitment of Geopark partners was not publicised.

4.31 Audit considers that the right to use the Geopark logos is a valuable benefit Geopark partners may derive from their collaboration with the AFCD. The AFCD's recruitment of Geopark partners should therefore be conducted in an open and transparent manner.

Advertising commercial activities on a government website

4.32 As mentioned in paragraph 4.24, many publicity and promotional activities of the Geopark partners were commercial in nature. Audit noted that details about these Geopark partners (e.g. the Geopark partners' names, contact information, service descriptions and website links) were advertised on a government website (i.e. the Hong Kong Geopark website). This gives an impression that the AFCD is advertising commercial activities on a government website.

4.33 According to Government guidelines (Note 45), for building up links from Government websites to other websites, bureaux and departments "should be discreet and consider whether it may wrongly imply a closer relation with certain organisations, especially those commercial ones". The guidelines also require that a conscious policy is needed in this regard.

4.34 As far as Audit could ascertain, the AFCD did not have a laid-down policy on advertising commercial activities on its website or building up links to other commercial websites such as those of the Geopark partners.

Audit recommendations

4.35 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation should:**

(a) **review the adequacy of the collaboration arrangements between the AFCD and its Geopark partners in publicising the Hong Kong Geopark and promoting geo-tourism, including:**

  (i) **maintaining proper documentation of the formal correspondence with the Geopark partners;**

  (ii) **clarifying the roles of the AFCD in the collaboration, taking into account the Government's exposure to business risks of the Geopark partners; and**

  (iii) **considering entering into formal agreements with the Geopark partners, clearly specifying the respective duties and responsibilities in the collaboration;**

(b) **in publicising the collaboration between the AFCD and a Geopark partner, avoid using wording which may imply a business relationship between the Government and the Geopark partner;**

Note 45: *The guidelines are entitled "Guidelines on Dissemination of Information through Government Websites".*

(c) **take measures to improve the transparency and accountability in the recruitment of Geopark partners, including:**

(i) **publicising the eligibility criteria for recruitment of Geopark partners (see para. 4.30(a)); and**

(ii) **conducting the recruitment of the Geopark partners in an open and transparent manner; and**

(d) **review the appropriateness of the existing practice of advertising Geopark partners' commercial activities on the Hong Kong Geopark website, including the need to formulate a clear policy for advertising commercial activities in publicising the Geopark and promoting geo-tourism.**

Response from the Administration

4.36 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations. He has also said that:

(a) the geopark concept is relatively new in Hong Kong and public knowledge is still quite limited. The AFCD will continue to promote it actively and seek more partners; and

(b) community participation is one of the conditions for the Hong Kong Geopark to retain its membership status of the Global Geoparks Network. Any organisation interested in becoming a Geopark partner would be informed of the requirements and criteria for recruitment.

PART 5: WAY FORWARD

5.1 This PART explores the way forward for the protection of country parks, focusing on:

(a) designation of new country parks (paras. 5.2 to 5.6); and

(b) performance measurement and reporting of nature conservation (paras. 5.7 to 5.9).

Regarding the existing country parks, they are subject to protection under the Country Parks Ordinance. In PARTs 2 to 4, Audit has found that there is a need to further improve the protection of country parks. In particular, for the protection of enclaves, this audit review has highlighted a need for the AFCD to devise a more effective strategy for implementing protective measures in accordance with the October 2010 arrangements (see paras. 3.2 to 3.25).

Designation of new country parks

5.2 Nature conservation is a key objective of designating country parks. The designation of country parks started in the 1970s. After more than 30 years, country parks currently cover some 44,240 ha of land. At present, about 40% of Hong Kong's land area has been included in country parks (see para. 1.5). Given the developments over the past decades (e.g. increase in the coverage of country parks and the fast pace of urbanisation), the further designation of any new country parks will inevitably be a matter requiring careful consideration and thorough consultation (Note 46).

Note 46: *Regarding the use of land which is already incorporated into Country Parks, the Country Parks Ordinance provides a legal framework for the development and management of the land.*

Potential sites identified for designation

5.3 As early as the 1990s, the AFCD had identified a number of potential sites for designation as country parks, as follows:

(a) ***1993 review.*** In 1993, an interdepartmental working group of the AFCD and the PlanD was formed to identify areas with conservation value for designation as country parks. The working group found 14 potential sites. The PlanD confirmed that the sites were not required for urban development. The then Country Parks Board (Note 47) also confirmed the sites' potential for designation; and

(b) ***1999 study.*** In 1999, the AFCD conducted a follow-up study on 3 of the 14 potential sites identified in the 1993 review. The Country and Marine Parks Board considered that the 3 sites were suitable for designation.

Progress in designation

5.4 Audit noted that, as at August 2013:

(a) of the 14 potential sites identified in the 1993 review, 9 (64%) had not been designated as country parks;

(b) of the 3 potential sites reconfirmed as suitable for designation in the 1999 study, none had been designated as country parks; and

(c) the AFCD was making preparation to designate one of these potential sites (i.e. the area at Robin's Nest near Sha Tau Kok) as a new country park.

Note 47: *The Country Parks Board was renamed Country and Marine Parks Board in 1995 upon the enactment of the Marine Parks Ordinance.*

Multifarious factors affecting designation

5.5 The identification of suitable sites for designation as country parks has been governed by established principles and criteria (e.g. conservation value of the areas). However, the designation of country parks is a dynamic activity, involving interactions of different parameters, such as:

(a) ***Growing public concern about nature conservation.*** There has been an increasing public awareness of the importance of nature conservation and biodiversity in Hong Kong (see para. 1.11). The complaints about development at Sai Wan in 2010 (see paras. 3.3 and 3.4) highlighted the growing public concern about better protection of the countryside;

(b) ***The 2011 revised policy.*** In the past, private land was usually left outside the boundaries of country parks. This has, however, resulted in problems with the management of enclaves (see para. 3.4). In 2011, the AFCD updated the criteria for designation of new country parks to the effect that the mere existence of private land would no longer be automatically taken as a determining factor for exclusion from the boundary of a country park. However, including private land in country parks would increase the spectrum of stakeholders (e.g. villagers) during the consultation stage for designation. Greater efforts are therefore needed to solicit the stakeholders' support in the designation process (see para. 3.17);

(c) ***Competing demands for land use.*** Land is a scarce and valuable resource in Hong Kong. As pointed out in the 2013 Policy Address, land shortage has seriously stifled the social and economic development in Hong Kong, and the Government is committed to increasing the supply of land in the short, medium and long terms. The use of country park area for incompatible purposes such as landfill purposes (see paras. 3.36 to 3.40) highlighted the keen competing demands for land use in Hong Kong today; and

(d) ***Other factors***. Case 4 shows how various socio-economic factors (e.g. funding availability and policy initiatives) could affect the designation of a country park.

Case 4

Designation of the Lantau North (Extension) Country Park

1. In 1993, areas on the north of Lantau Island (Lantau North) were identified as suitable for designation as a country park.

2. From 1994 to 1997, the AFCD made attempts to secure resources for the designation but was not successful.

3. In October 1999, it was stated in the Policy Address that the Administration would substantially extend managed country park areas on Lantau Island in 2001.

4. During 2000 to 2002, the AFCD obtained the endorsement of the Country and Marine Parks Board, and gazetted the draft map of Lantau North (Extension) Country Park. The draft map was then submitted to the Administration for consideration.

5. In 2003, it was considered that the Administration might not have sufficient resources to administer the proposed country park. The designation of the country park would require further consideration.

6. In 2007, a concept plan for Lantau Island was published by a task force which was under the steer of the Financial Secretary. It was stated in the concept plan that the proposed Lantau North (Extension) Country Park was a major element under the development theme.

7. In 2008, the designation process was revived. The draft map of the proposed country park was gazetted again. The country park was designated in November 2008.

Audit comments

8. Having been affected by different factors (e.g. funding availability and policy initiatives), the designation of the Lantau North (Extension) Country Park turned out to be a very long process.

Source: AFCD records

Need to keep potential sites under review

5.6 The 14 potential sites for designation as country parks were first identified 20 years ago in 1993 (see para. 5.3(a)). So far, less than half (36%) of these potential sites have been designated as country parks (see para. 5.4(a)). Given its fast pace of urbanisation, Hong Kong has undergone a lot of economic development in the past two decades. Today, there are also great competing demands for land use and multifarious factors affecting the designation of new country parks (see para. 5.5). Audit considers that the AFCD needs to keep under review the suitability for designation of the nine outstanding potential sites as country parks. Given the long time elapsed since the identification of the potential sites for country parks in the 1993 review, it is timely for the AFCD to revisit its strategy for the designation of new country parks in future.

Performance measurement and reporting of nature conservation

5.7 In a small place like Hong Kong, a fine balance needs to be struck between economic development and nature conservation. This is important for the long-term sustainable development of country parks as a key component of nature conservation in Hong Kong. In this regard, the AFCD needs to make more efforts to demonstrate to all stakeholders the outcomes and effectiveness of its "Nature Conservation and Country Parks" Programme (see para. 1.9).

Performance measures

5.8 The AFCD has included in its Controlling Officer's Report a number of performance measures, some of which are related to country parks. Table 8 shows the key performance measures relating to the protection of country parks.

Table 8

Key performance measures relating to the protection of country parks

Key performance measures		2011	2012	2013
Target	**Target**	**(Actual)**	**(Actual)**	**(Planned)**
(a) Country parks and special areas managed (ha)	44,276	44,239	44,239	44,276
Indicator		**(Actual)**	**(Actual)**	**(Estimate)**
(b) Seedlings produced		710,000	700,000	680,000
(c) Seedlings planted		740,000	723,000	700,000
(d) Participants in educational activities		334,400	280,000	280,000
(e) Visitors to country parks (million)		13.4	12.9	13.0
(f) Hill fires attended to		42	15	25

Source: AFCD Controlling Officer's Report

5.9 As can be seen from Table 8, the AFCD's key performance measures relating to the protection of country parks are mainly output indicators. These performance measures are not able to indicate the outcomes and effectiveness of AFCD's work on nature conservation (e.g. biodiversity) in country parks. In this regard, Audit notes that the AFCD has conducted periodic biodiversity surveys over the territory. However, results of the surveys in relation to country parks are currently not published.

Audit recommendations

5.10 **Audit has *recommended* that the Director of Agriculture, Fisheries and Conservation, in consultation with the Secretary for the Environment, should:**

(a) **having regard to the multifarious factors mentioned in paragraph 5.5, revisit the AFCD's strategy for the designation of new country parks. In particular, the AFCD should:**

(i) **for the nine potential sites identified in the 1993 review which have not yet been designated as country parks, keep under review their suitability for designation as country parks; and**

(ii) **formulate an action plan (with expected timeframe) for implementing the revised strategy, taking account of all relevant factors; and**

(b) **consider developing performance measures showing the outcomes and effectiveness of the AFCD's work on nature conservation in country parks for publishing in its website.**

Response from the Administration

5.11 The Director of Agriculture, Fisheries and Conservation agrees with the audit recommendations. He has said that the AFCD will take follow-up actions to implement the recommendations.

Appendix A
(para. 1.5 and Appendix B refer)

Country parks and special areas in Hong Kong (June 2013)

Item	Country park/special area	Year of designation	Area (ha)
Country parks:			
1.	Shing Mun	1977	1,400
2.	Kam Shan	1977	337
3.	Lion Rock	1977	557
4.	Aberdeen	1977	423
5.	Tai Tam	1977	1,315
6.	Sai Kung East	1978	4,477
7.	Sai Kung West	1978	3,000
8.	Plover Cove	1978	4,594
9.	Lantau South	1978	5,640
10.	Lantau North	1978	2,200
11.	Pat Sin Leng	1978	3,125
12.	Tai Lam	1979 (revised in 1995)	5,370
13.	Tai Mo Shan	1979	1,440
14.	Lam Tsuen	1979	1,520
15.	Ma On Shan	1979 (revised in 1998)	2,880
16.	Kiu Tsui	1979	100
17.	Plover Cove (Extension)	1979	630
18.	Shek O	1979 (revised in 1993)	701
19.	Pok Fu Lam	1979	270
20.	Tai Tam (Quarry Bay Extension)	1979	270
21.	Clear Water Bay	1979	615
22.	Sai Kung West (Wan Tsai Extension)	1996	123
23.	Lung Fu Shan	1998	47
24.	Lantau North (Extension)	2008	2,360
		Sub-total:	43,394

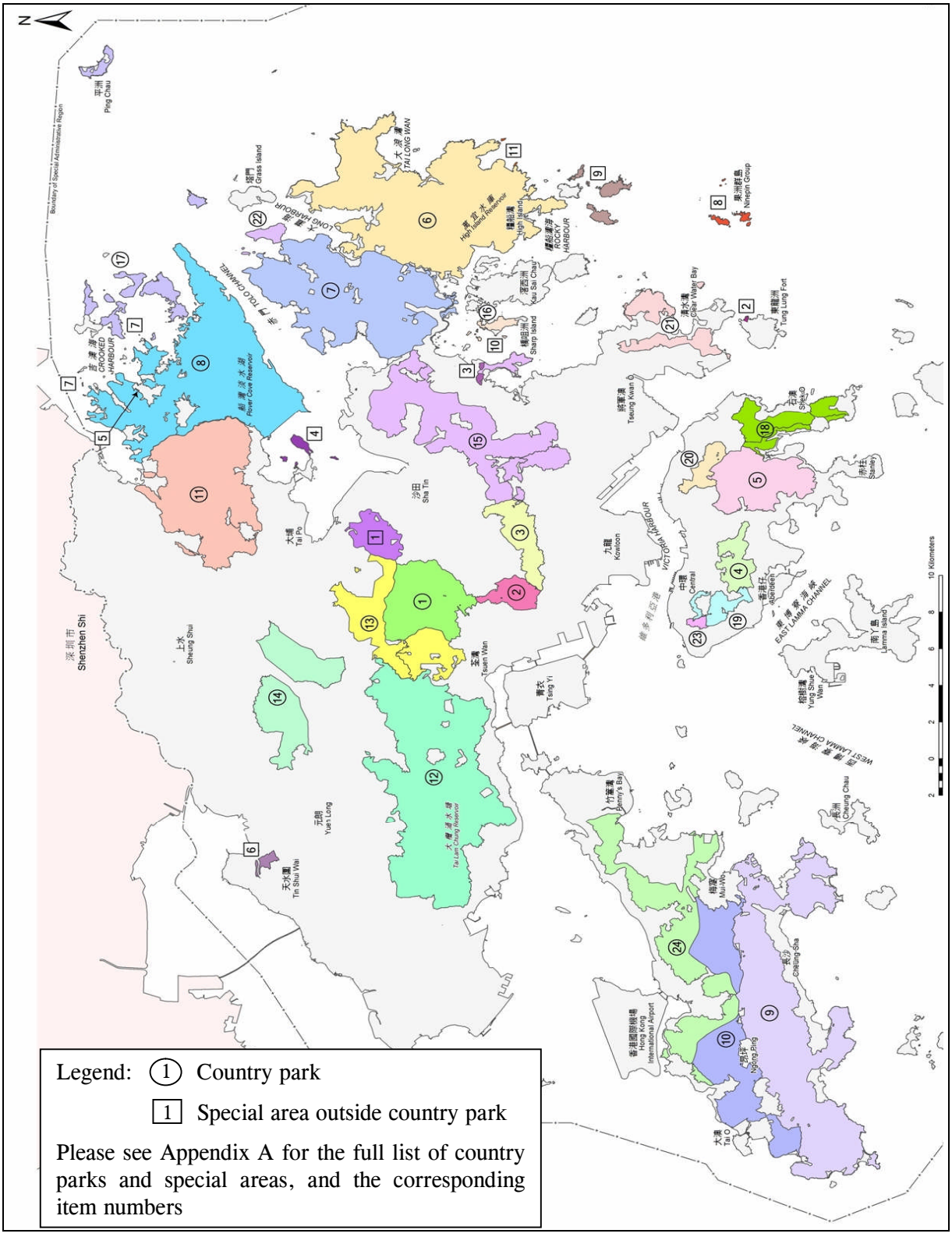
Appendix A
(Cont'd)
(para. 1.5 and Appendix B refer)

Item	Country park/special area	Year of designation	Area (ha)
Special areas outside country parks:			
1.	Tai Po Kau Nature Reserve	1977	460
2.	Tung Lung Fort	1979	3
3.	Tsiu Hang	1987	24
4.	Ma Shi Chau	1999	61
5.	Lai Chi Wo	2005	1
6.	Hong Kong Wetland Park	2005	61
7.	Double Haven	2011	0.8
8.	Ninepin Group	2011	53.1
9.	Ung Kong Group	2011	176.8
10.	Sharp Island	2011	0.06
11.	High Island	2011	3.9
		Sub-total:	844.66
Total area for country parks and special areas outside country parks:			44,238.66
Special areas inside country parks: (Figures in brackets refer to the item numbers of the related country parks as listed above)			
12.	Shing Mun Fung Shui Woodland (1)	1977	6
13.	Tai Mo Shan Montane Scrub Forest (1)	1977	130
14.	Kat O Chau (17)	1979	24
15.	Lantau Peak (9)	1980	116
16.	Pat Sin Range (11)	1980	128
17.	Pak Tai To Yan (14)	1980	32
18.	Sunset Peak (9 and 10)	1980	370
19.	Pok Fu Lam (19)	1980	155
20.	Ma On Shan (15)	1980	55
21.	Chiu Keng Tam (8)	1980	8
22.	Ng Tung Chai (13)	1980	128

Source: AFCD records

Appendix B
(para. 1.5 refers)

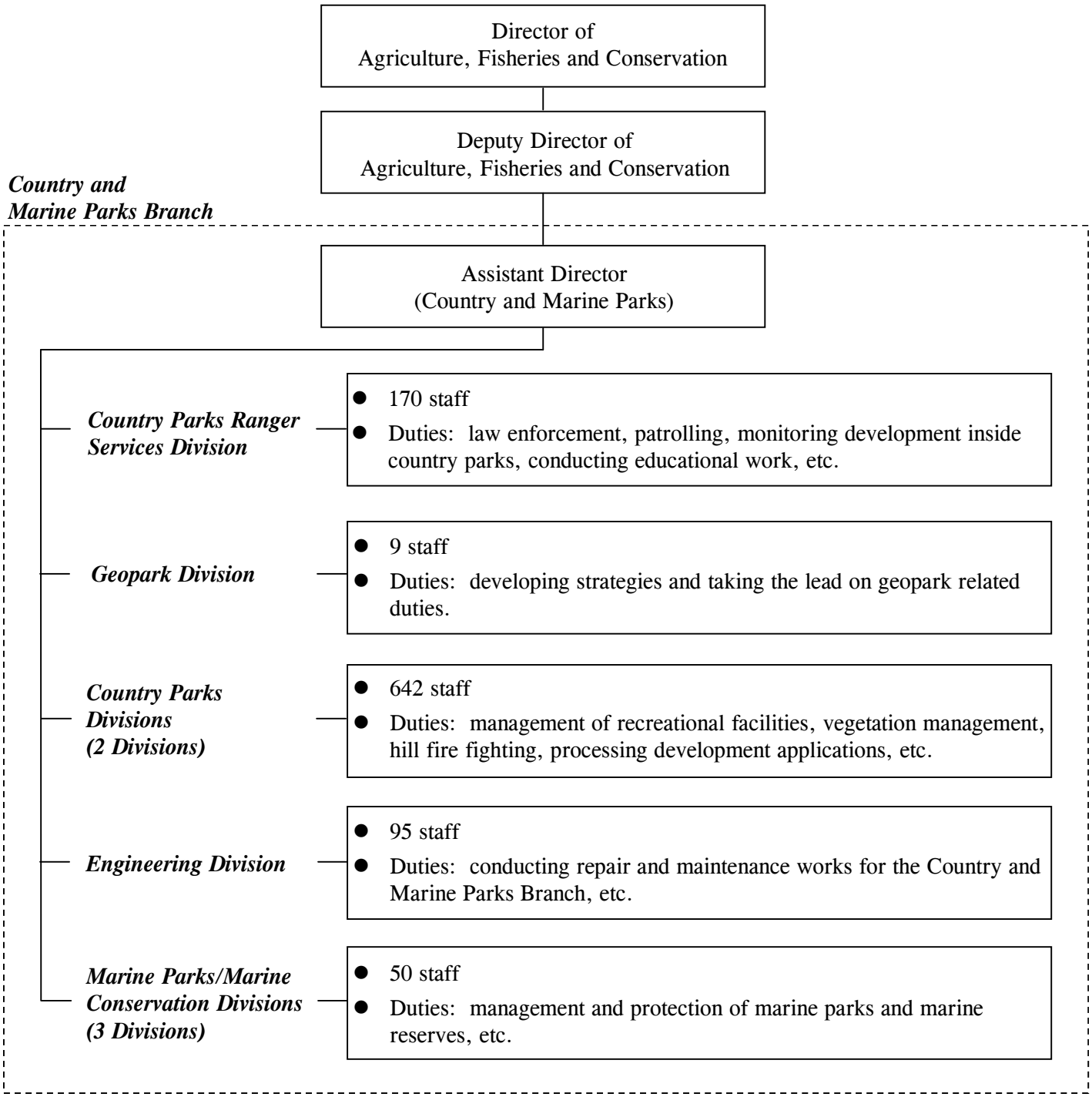
Distribution of country parks and special areas (June 2013)



Source: AFCD records

Appendix C
(paras. 1.9, 4.2 and 4.22 refer)

Country and Marine Parks Branch
Organisation chart
(June 2013)



Source: AFCD records

Appendix D
(paras. 2.3 and 2.27 refer)

Prosecutions in relation to offences in country parks (2008-09 to 2012-13)

Nature of offence	Number of prosecution cases				
	2008-09	**2009-10**	**2010-11**	**2011-12**	**2012-13**
Driving/possessing of vehicles/bicycles without permits	239	277	350	362	610
Littering	383	387	386	313	235
Unauthorised camping	17	31	29	32	91
Illegal felling of plants (Note)	16	6	12	14	3
Others (e.g. illegal feeding of wild animals) (Note)	187	160	133	140	51
Total	842	861	910	861	990

Source: AFCD records

Note: Some of the offences were committed outside country parks.

Appendix E
(para. 3.4 refers)

Enclaves covered by Outline Zoning Plans (at the time of the Sai Wan Incident in 2010)

Country park	Item	Name of the site	Area (ha)
Lion Rock	1	Shap Yi Wat	3
Ma On Shan	2	Ngau Liu and Kwun Yam Shan	72
	3	Wong Chuk Yeung	37
Pat Sin Leng	4	Sha Lo Tung	56
Plover Cove	5	Kai Kuk Shue Ha, Ho Lek Pui and Ham Hang Mei	8
	6	Ho Pui, Tin Sam, Sam Ka Tsuen, San Uk Tsuen, San Uk Ha, Lo Wai, Leng Pui and Kau Tam Tso	98
Sai Kung East and West	7	Wong Yi Chau and Hei Tsz Wan	9
	8	Pak Tam Chung	2
	9	Tsak Yue Wu	15
	10	Tai Long, Lam Uk Wai, Lung Mei Tau, Tai Wan and Ham Tin	46
	11	Pak Tam	5
	12	Shek Hang	3
	13	Tai Mong Tsai, She Tau, Ping Tun, Tit Kim Hang, Tam Wat, Tai Po Tsai, San Tin Hang, Tso Wo Hang, Wong Chuk Wan and Wong Mo Ying	126
	14	Wong Keng Tei and Tsam Chuk Wan	36
	15	Sham Chung	32
Lantau South, North and North (Extension)	16	Fan Lau Tsuen	24
	17	Pak Fu Tin	3
	18	Lung Mei and Tai Long	28
	19	Ngong Ping	103
	20	Lai Chi Yuen	5
	21	Shui Tseng Wan	2
	22	Yi Long	7
	23	Shui Hau Wan	1
		Total	721

Source: AFCD and PlanD records

Appendix F
(para. 3.4 refers)

Enclaves not covered by statutory plans (at the time of the Sai Wan Incident in 2010)

Country park	Item	Name of the site	Area (ha)
Ma On Shan	1	Mau Ping, Mau Ping Lo Uk, Mau Ping San Uk and Wong Chuk Shan	45
Kam Shan	2	Kam Shan	1
Tai Mo Shan	3	Site near Chuen Lung	10
	4	Site near Tso Kung Tam	9
Tai Lam	5	Tin Fu Tsai	53
	6	Tsing Fai Tong	26
	7	Sheung Tong	10
	8	Sheung Fa Shan	26
	9	Yuen Tun	19
Pat Sin Leng	10	Ping Shan Chai	15
Plover Cove	11	Hung Shek Mun Tsuen	10
	12	Lai Tau Shek	10
	13	Sam A Tsuen	23
	14	Sai Lau Kong	2
	15	Siu Tan	20
	16	Kop Tong, Mui Tsz Lam and Lai Chi Wo	91
	17	So Lo Pun	29
	18	Kuk Po San Uk Ha, Kuk Po Lo Wai, Yi To, Sam To, Sze To and Ng To	64
	19	Fung Hang	9
	20	Yung Shue Au	18
	21	Fan Kei Tok	5
	22	Chau Mei, Tai Tong, Chau Tau and Sha Tau	26
Sai Kung East and West	23	Pak A	11
	24	Tung A	10
	25	Pak Lap	6
	26	Pak Tam Au	14
	27	To Kwa Peng	9

Appendix F
(Cont'd)
(para. 3.4 refers)

Country park	Item	Name of the site	Area (ha)
Sai Kung East and West	28	Chek Keng	31
	29	Tai Tan, Uk Tau, Ko Tong and Ko Tong Ha Yeung	67
	30	Tung Sam Kei	4
	31	Ko Lau Wan, Mo Uk, Lam Uk, Lau Uk and Tse Uk	33
	32	Sai Wan	17
	33	Hoi Ha	8
	34	Pak Sha O and Pak Sha O Ha Yeung	29
	35	Nam Sham Tung	5
	36	Lai Chi Chong	16
	37	Yung Shue O	32
	38	Cheung Sheung	16
	39	Tai Hom	5
	40	Wong Chuk Long	4
	41	Site near Wong Mau Kok	3
Lantau South, North and North (Extension)	42	Luk Wu, Upper Keung Shan, Lower Keung Shan, Cheung Ting and Hang Pui	155
	43	Tsin Yue Wan	4
	44	Ngau Kwo Tin	7
	45	Tei Tong Tsai	15
	46	Yi Tung Shan	7
	47	Man Cheung Po	2
	48	Site near Nam Shan	6
	49	Site near Peaked Hill	5
	50	Tai Ho and site near Wong Kung Tin	277
	51	Yi O	23
Tai Po Kau Special Area	52	Site near Ngau Wu Tok	5
	53	Site near Tai Po Mei	6
Ma Shi Chau Special Area	54	Shui Mong Tin	2
		Total	1,355

Source: AFCD and PlanD records

Appendix G
(paras. 3.15, 3.16 and 3.18(a) refer)

Major statutory procedures for revising the boundaries of an existing country park

Item	Procedure
1	The Chief Executive in Council may refer the approved map of an existing country park to the Country and Marine Parks Authority for replacement by a new map.
2	The Authority shall prepare the draft map showing the new country park boundary in consultation with the Country and Marine Parks Board.
3	The Authority shall gazette the draft map for public inspection for a period of 60 days.
4	The Country and Marine Parks Board shall hear objections to the draft map, if any. The Board may reject the objection in whole or in part, or direct amendments to be made to the draft map to meet the objection in whole or in part.
5	The Authority shall submit the draft map, together with a schedule of objections and any amendments made to meet objections, to the Chief Executive in Council for approval within six months from the last day of the period during which objections may be lodged.
6	Upon submission of the draft map, the Chief Executive in Council shall: (i) approve the draft map; (ii) refuse to approve it; or (iii) refer it to the Authority for further consideration and amendment.
7	After approval of the draft map by the Chief Executive in Council, the Chief Executive shall designate the areas shown in the approved map to be country parks.

Source: AFCD records

Appendix H
(para. 3.28 refers)

Departments responsible for taking action against unauthorised use of land in country parks

Item	Matters involved	Action to be taken (Note)	
		AFCD	**LandsD**
	Leased land (i.e. private land)		
1	Unauthorised development	—	Lease enforcement action
	Unleased land (i.e. government land)		
2	Unauthorised development involving structures	Support and assistance to the LandsD	Enforcement action
3	Unauthorised development not involving structures	Enforcement action	—
4	Unauthorised excavation	Enforcement action against illegal planting	Enforcement action against site formation

Source: *LandsD records*

Note: *Overall, the AFCD is responsible for patrolling country parks and notifying the LandsD of any suspected unauthorised developments within country parks. The LandsD will confirm upon request by the AFCD the status of any land inside country parks where suspected unauthorised development is detected.*

Appendix I
(para. 3.36 refers)

Chronology of key events: Using 18 ha of land in the Clear Water Bay Country Park for landfill purposes (July 1991 to September 2013)

Date	Key event
July 1991	Having consulted the then Country Parks Board (see also Note 47 to para. 5.3(a)), the then Director of Agriculture and Fisheries approved the encroachment of the SENT Landfill onto a site of 18 ha in the Clear Water Bay Country Park.
August 1992	(a) A joint meeting was held among the AFCD, the EPD, the then Attorney General's Chambers, and the then Planning, Environment and Lands Bureau. (b) It was concluded that the AFCD would issue a memo to the LandsD, denoting that the AFCD did not object to using the 18 ha of land in Clear Water Bay Country Park for purposes of the SENT Landfill operation. (c) It was also concluded that, upon issuing the memo, the LandsD would allocate the area concerned to the EPD for use as a landfill site.
August 1993	The LandsD allocated the area concerned to the EPD.
August 1993 to September 2013	The site was being used for landfill purposes.

Source: AFCD and EPD records

Appendix J
(para. 3.38 refers)

Chronology of key events: Proposed excision of 5 ha of land from the Clear Water Bay Country Park (December 2005 to January 2011)

Date	Key event
December 2005 to September 2008	The AFCD and the EPD consulted the Country and Marine Parks Board. It was intended that 5 ha of land in the Clear Water Bay Country Park would be used for the extension of the SENT Landfill.
September 2008	The Country and Marine Parks Board advised that an area of 5 ha be excised from the Clear Water Bay Country Park.
May 2010	The Chief Executive in Council ordered that the original map of the Clear Water Bay Country Park should be replaced by a new map which excluded the area of 5 ha.
October 2010	LegCo objected to the excision of the area concerned from the Clear Water Bay Country Park.
January 2011	The Administration stopped pursuing the excision and the EPD revised its landfill extension plan.

Source: AFCD records

Appendix K

Acronyms and abbreviations

AFCD	Agriculture, Fisheries and Conservation Department
API	Announcement in the public interest
Audit	Audit Commission
DPA	Development Permission Area
EDB	Education Bureau
EPD	Environmental Protection Department
GPS	Global Positioning System
ha	Hectare
kg	Kilogramme
km	Kilometre
LandsD	Lands Department
LegCo	Legislative Council
MA	Management Agreement
NGO	Non-governmental organisation
OZP	Outline Zoning Plan
PDA	Personal data assistant
PlanD	Planning Department
SENT	South East New Territories

CHAPTER 6

Fire Services Department

Fire protection and prevention work of the Fire Services Department

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

FIRE PROTECTION AND PREVENTION WORK OF THE FIRE SERVICES DEPARTMENT

Contents

FIRE PROTECTION AND PREVENTION WORK OF THE FIRE SERVICES DEPARTMENT

Executive Summary

1. The fire protection and prevention work of the Fire Services Department (FSD) aims to reduce fire hazards in the community and to ensure that appropriate fire protection measures are provided in buildings and premises. For 2013-14, the estimated expenditure is $369 million. The Audit Commission (Audit) has recently conducted a review of the FSD's fire protection and prevention work (paras. 1.2, 1.4 and 1.7).

Monitoring fire service installations and equipment in buildings

2. The Fire Service (Installations and Equipment) Regulations (Cap. 95B) require: (a) owners of fire service installations and equipment (FSIs) to have them inspected by registered FSI contractors annually; and (b) FSI contractors to forward a copy of the inspection certificates (FS251) to the FSD within 14 days after inspection (paras. 2.3 to 2.5).

3. ***Monitoring maintenance of FSIs.*** In 2012, the FSD launched a new computer system to support its fire protection work. As the FSD had not completed updating and verifying the system's data of FSIs installed in 47,000 buildings, the system could only be used to identify buildings without FS251 (i.e. no evidence of having conducted annual inspections). For buildings with FS251s, the system could not ascertain whether the inspections had covered all the FSIs installed. In April 2013, the FSD found that no FS251 was received for 20,690 (44% of 47,000) buildings, suggesting that annual inspection had not been conducted on their FSIs (paras. 2.8 to 2.10 and 2.12).

4. ***Monitoring rectification of defective FSIs.*** Audit analysis of the computer records revealed 7,662 reported cases of defective FSIs, of which 67% had remained outstanding for over 100 days. Audit has found that the FSD's laid-down guidelines on monitoring the rectification of defects in major FSIs had not always been complied with (paras. 2.16 to 2.19).

5. ***Monitoring unwanted alarm cases.*** In 2006, an FSD review found that unwanted alarms had taxed heavily on FSD resources and induced a number of negative consequences on the community. However, there were over 20,000 unwanted alarms in each subsequent year. Audit analysis of the 28,461 unwanted alarms in 2012 revealed 498 buildings each having 10 or more unwanted alarm cases. The FSD needs to give priority to following up such buildings (paras. 2.25, 2.27 and 2.29).

Monitoring licensed premises

6. ***Fire safety requirements on food premises and checking compliance.*** After receiving a notification from the Food and Environmental Hygiene Department (FEHD) of the grant of a provisional licence to food premises, FSD staff are required to conduct a verification inspection to check compliance with fire safety requirements within seven working days. Audit examination of 20 provisional licence cases revealed that: (a) there were delays in conducting some verification inspections; and (b) the FSD inspections found 17 cases of non-compliance with the requirement to submit invoices and test certificates of polyurethane foam filled mattresses and upholstered furniture. While the FSD issued advisory letters in all 17 cases, it only informed the FEHD of the non-compliance in 7 cases. For public safety, it is important to ensure that no food business is allowed to operate in premises not meeting the essential fire safety requirements (paras. 3.7 to 3.11).

7. ***Monitoring FSIs in licensed premises.*** The FSD has not used its new computer system to monitor the compliance with the statutory requirement of conducting annual inspections of FSIs in licensed premises because not all FSI data and FS251s have been input into the system. Audit examination revealed that no FS251 was received for some licensed premises for four years. There was no documentary evidence that the FSD had taken any enforcement action (paras. 3.14 and 3.16).

Monitoring ventilating systems

8. The Building (Ventilating Systems) Regulations (Cap. 123J) and Ventilation of Scheduled Premises Regulation (Cap. 132CE) require ventilating systems to be inspected annually by specialist contractors registered with the Buildings Department. Specialist contractors are required to forward a copy of the inspection certificates to the FSD within 14 days after inspection (para. 4.3).

9. ***Monitoring maintenance of ventilating systems.*** Audit examination has revealed the following issues: (a) as the FSD started in 2001 to create records for monitoring the annual maintenance of ventilating systems installed in new buildings, the FSD's records of ventilating systems installed in pre-2001 buildings may not be complete; (b) due to system bugs, the FSD cannot use its computer system to match ventilating system records with the inspection certificate records so as to identify all ventilating systems not having been inspected annually; and (c) no inspection certificate was received for 60 ventilating systems (out of 602 cases examined by Audit) and enforcement action was not taken by the FSD (paras. 4.4 to 4.7).

Registration and monitoring of fire service installation contractors

10. ***Improving the FSI contractor registration scheme.*** The Fire Service (Installation Contractors) Regulations (Cap. 95A) governing the registration scheme for FSI contractors was enacted in 1971. An effective FSI contractor registration scheme will facilitate the FSD's work in ensuring the proper provision and maintenance of FSIs in buildings and premises. In April 2003, after a review of the scheme, a working group set up by the FSD made a number of recommendations to improve the scheme. Implementing the recommendations however requires legislative amendments. As at 31 August 2013, the recommendations had yet to be implemented (paras. 5.2 and 5.4 to 5.7).

11. ***Monitoring FSI contractors.*** The FSD has not established procedures to monitor the timeliness of submission of FS251s by FSI contractors. During the year ended 30 June 2013, the FSD received 124,685 FS251s from a total of 556 contractors. While FSI contractors are required by law to submit FS251s within 14 days after work completion, Audit analysis revealed that 29% of the FS251s were submitted late, involving a total of 470 contractors (para. 5.13).

Handling complaints about fire safety

12. FSD staff are required to handle complaints about fire safety within specified time limits. However, Audit found cases of delay in handling the complaints, without documented reasons or approvals. As at 15 July 2013, there were 1,525 outstanding complaint cases, including 157 cases outstanding for over 360 days. Audit examination revealed that supervisors were not provided with regular reports for the monitoring and control of outstanding cases (paras. 6.4, 6.5 and 6.8 to 6.10).

Publicity and education on fire safety

13. The FSD has two announcements in the public interest (APIs) on the proper maintenance of FSIs which are now being broadcast on television. However, the statutory requirement to conduct annual inspections of FSIs is not mentioned in both APIs. As 44% of the buildings were found not complying with the requirement in April 2013 (see para. 3 above), the FSD should publicise the requirement in future APIs to help enhance public awareness (paras. 7.17 and 7.18).

Audit recommendations

14. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Fire Services should:**

Monitoring fire service installations and equipment in buildings

(a) **for buildings found without FS251 in 2012-13 to support the annual inspections of their FSIs, closely monitor the follow-up actions and take appropriate further measures to ensure timely compliance with the statutory annual inspection requirement (para. 2.14(a));**

(b) **complete updating and verifying the FSI data in the new computer system as soon as possible, in order that the system can be used more effectively for monitoring the proper maintenance of all FSIs installed in buildings (para. 2.14(b));**

(c) **tighten the controls to ensure that FSD staff closely monitor the rectification of defects found in any major FSI (para. 2.21(b));**

(d) **formulate further measures to reduce the overall number of unwanted alarms and give priority to following up buildings with many unwanted alarm cases (para. 2.30);**

Monitoring licensed premises

(e) **remind FSD staff to conduct verification inspections of food business premises granted with provisional licences promptly in accordance with the FSD's guidelines (para. 3.12(a));**

(f) **ensure that FSD staff handle cases of non-compliance with fire safety requirements by provisional food business licensees consistently (para. 3.12(b));**

(g) **make effective use of the new computer system to monitor the maintenance of FSIs in licensed premises and take enforcement action in cases of non-compliance with the statutory annual inspection requirement (para. 3.18(b) and (c));**

Monitoring ventilating systems

(h) **take appropriate measures to improve the monitoring of the maintenance of ventilating systems (para. 4.9(b));**

Registration and monitoring of fire service installation contractors

(i) **in consultation with the Secretary for Security, determine as soon as possible how best to implement the working group's recommendations on improving the FSI contractor registration scheme (para. 5.8);**

(j) **monitor the timeliness of submission of FS251s by FSI contractors and take appropriate actions to ensure their compliance with the statutory requirements in this regard (para. 5.17(a) and (b));**

Handling complaints about fire safety

(k) **provide supervisors with regular reports on the details of outstanding complaint cases to facilitate their monitoring and control work (para. 6.11(c)); and**

Publicity and education on fire safety

(l) **publicise the statutory requirement on conducting annual inspections of FSIs in future APIs on fire prevention (para. 7.20(a)).**

Response from the Administration

15. The Administration agrees with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

1.2 ***Fire Protection and Prevention Programme.*** The Fire Services Department (FSD) operates three programmes in accordance with the Fire Services Ordinance (Cap. 95): Fire Service, Fire Protection and Prevention, and Ambulance Service. The Fire Protection and Prevention Programme aims to reduce fire hazards in the community and to ensure that appropriate fire protection measures are provided in buildings and premises by owners/occupiers, who have primary responsibilities in this regard. The work under this Programme includes the following:

(a) ***Fire service installations and equipment (FSIs).*** Fire protection measures include the provision of FSIs for the purposes of extinguishing, attacking, preventing or limiting a fire, giving warning of a fire and facilitating evacuation (Note 1). Examples of FSIs include sprinkler system, fire hydrant and hose reel system, fire alarm system and emergency lighting. The FSD publishes from time to time a Code of Practice specifying the minimum FSIs necessary for different types of buildings and premises. It vets building plans and conducts inspections to ensure the proper provision and maintenance of FSIs;

(b) ***Licensed premises.*** The FSD is responsible for licensing storage or manufacture of dangerous goods (such as petrol and diesel but excluding explosives and liquefied petroleum gas), storage of timber and vehicles for conveyance of dangerous goods, and advising other Government authorities on fire protection measures for the purposes of licensing different types of premises (e.g. restaurants). It conducts inspections to ensure the fire safety of licensed premises;

Note 1: *Fire protection measures also include structurally-built fire safety elements (e.g. means of escape and fire fighting access). Such construction requirements fall within the purview of the Buildings Department.*

(c) ***Ventilating systems.*** The FSD conducts inspections of ventilating systems in buildings and premises, and ensures their proper maintenance;

(d) ***FSI contractors (Note 2).*** The FSD is responsible for the registration and monitoring of FSI contractors;

(e) ***Complaints.*** The FSD investigates complaints about fire safety and initiates law enforcement action when required; and

(f) ***Publicity and education.*** The FSD organises fire safety publicity and education activities to inculcate a fire safety culture in Hong Kong and encourage greater community involvement in improving fire safety.

1.3 ***Enhancing fire safety of old buildings.*** To enhance the fire safety of old buildings for better protection of lives and properties, the Government enacted the following legislation empowering the Buildings Department (BD) and FSD to require owners/occupiers to provide additional fire safety measures which were not originally included in the approved building plans:

(a) ***The Fire Safety (Commercial Premises) Ordinance (Cap. 502).*** The Ordinance, which came into operation in May 1997, requires owners/occupiers of prescribed commercial premises to upgrade their fire safety measures as directed by the BD/FSD. The Ordinance was amended in 1998 to expand its scope to cover pre-1987 commercial buildings; and

(b) ***The Fire Safety (Buildings) Ordinance (Cap. 572).*** The Ordinance, which came into operation in July 2007, requires owners/occupiers of all pre-1987 composite or domestic buildings to carry out fire safety improvement works as directed by the BD/FSD.

The work of the FSD in enforcing the two Ordinances is also included as part of its Fire Protection and Prevention Programme.

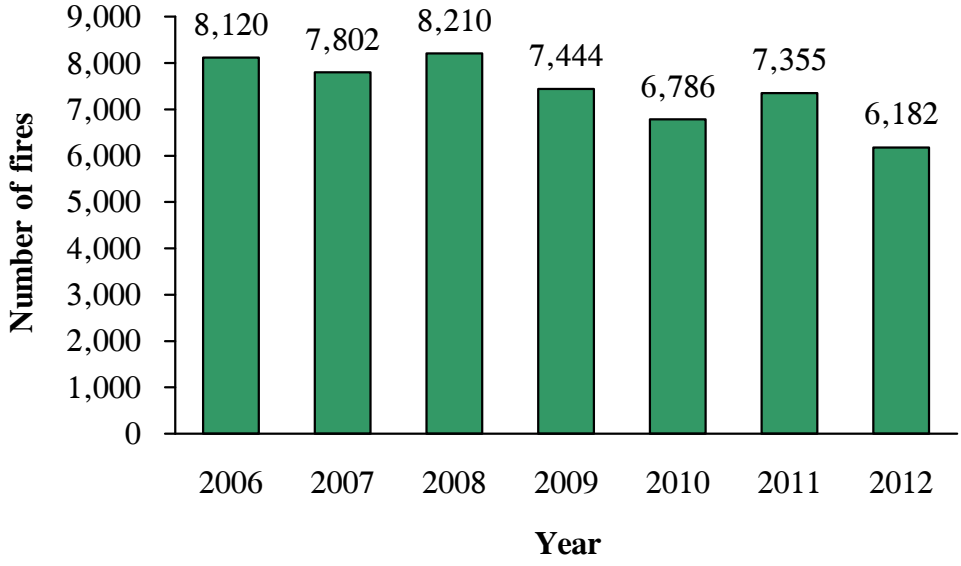
Note 2: *In this Audit Report, "FSI contractor" means a fire service installation contractor registered under the Fire Service (Installation Contractors) Regulations (Cap. 95A — see para. 5.2).*

1.4 The FSD conducts the Fire Protection and Prevention Programme mainly through two of its seven Commands, namely the Fire Safety Command and the Licensing and Certification Command (see Appendix A). The expenditure on the Programme is met from the Government General Revenue Account. For 2013-14, the estimated expenditure is $369 million, mainly including the costs of 506 staff. Of the 506 staff, 177 working in the two Building Improvement Divisions are responsible for enforcing the two Ordinances in paragraph 1.3 to enhance the fire safety of old buildings.

1.5 Figures 1 and 2 show the fire statistics for the past seven years.

Figure 1

Number of fires
(2006 to 2012)

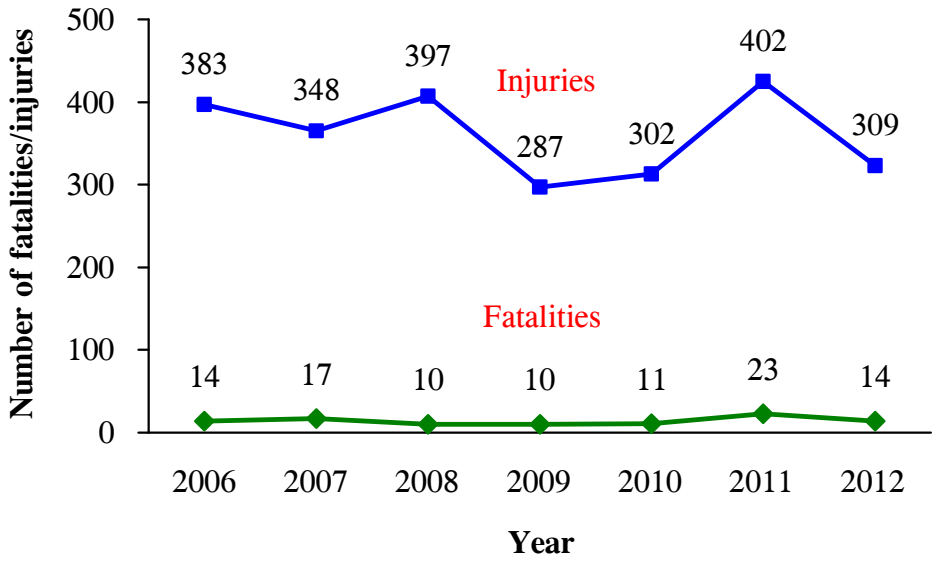


Source: *FSD records*

Remarks: *The number of fires refers to real fire incidents and does not include unwanted and false alarm cases (see para. 2.24).*

Figure 2

Fatalities and injuries in fires (2006 to 2012)



Source: FSD records

Audit reviews

1.6 In 1998 and 2004, the Audit Commission (Audit) conducted two audit reviews of fire safety in buildings. The results were reported, respectively, in the Director of Audit's Report No. 31 of October 1998 (Chapter 5 "Fire safety of buildings") and the Director of Audit's Report No. 43 of October 2004 (Chapter 11 "Upgrading of fire safety standards in old buildings").

1.7 More recently, Audit has conducted a review of the FSD's fire protection and prevention work, focusing on the following areas:

(a) monitoring FSIs in buildings (PART 2);

(b) monitoring licensed premises (PART 3);

(c) monitoring ventilating systems (PART 4);

(d) registration and monitoring of FSI contractors (PART 5);

(e) handling complaints about fire safety (PART 6); and

(f) publicity and education on fire safety (PART 7).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

1.8 Audit has conducted a separate review of the work on enhancing fire safety of old buildings undertaken by the BD and FSD (see para. 1.3). The results are reported in Chapter 7 of the Director of Audit's Report No. 61.

General response from the Administration

1.9 The Director of Fire Services agrees with the audit recommendations.

1.10 The Secretary for Security has said that he noted and welcomes the audit recommendations to improve the fire protection and prevention work of the FSD. The FSD will, in consultation with relevant departments, follow up on the recommendations. He will closely monitor the progress of those follow-up actions and ensure that the recommendations are implemented as far as possible in a timely manner.

Acknowledgement

1.11 Audit would like to acknowledge with gratitude the full cooperation of the staff of the FSD during the course of the audit review.

PART 2: MONITORING FIRE SERVICE INSTALLATIONS AND EQUIPMENT IN BUILDINGS

2.1 This PART examines the FSD's monitoring work in ensuring the proper maintenance of FSIs in buildings, focusing on:

(a) monitoring maintenance of FSIs (paras. 2.10 to 2.15);

(b) monitoring rectification of defective FSIs (paras. 2.16 to 2.22);

(c) monitoring unwanted alarm cases (paras. 2.23 to 2.31); and

(d) promoting use of electronic form (paras. 2.32 to 2.38).

2.2 The Fire Service Installations Task Force (hereinafter referred to as the "Task Force") of the Licensing and Certification Command is responsible for ensuring that FSIs in buildings are properly maintained (Note 3). It monitors the maintenance of the FSIs and the rectification of defective FSIs. It also conducts inspections proactively.

Maintenance of FSIs

2.3 The Fire Service (Installations and Equipment) Regulations (Cap. 95B) require that the owner (Note 4) of any FSI shall:

Note 3: *In respect of the provision of FSIs in a new building, the responsibilities for vetting building plans and conducting acceptance inspections rest with the New Projects Division of the Fire Safety Command and the Fire Service Installations Division of the Licensing and Certification Command, respectively. The BD will not issue an occupation permit unless the FSD has certified that the FSIs shown on the vetted building plans have been properly installed in the building.*

Note 4: *According to the Fire Services Ordinance, in respect of any FSI, "owner" includes the occupier or the owner of the premises in which the FSI is installed.*

(a) keep such FSI in efficient working order at all times; and

(b) have such FSI inspected by an FSI contractor at least once in every 12 months.

Form FS251

2.4 The Fire Service (Installations and Equipment) Regulations also require that:

(a) no FSI shall be installed, maintained, inspected or repaired in any premises by any person other than an FSI contractor; and

(b) whenever an FSI contractor installs, maintains, inspects or repairs any FSI, he shall within 14 days after completion of the work issue to the person on whose instructions the work was undertaken a certificate and forward a copy thereof to the FSD.

2.5 The FSD requires FSI contractors to prepare their certificates using a standard form named as Form FS251 Certificate of Fire Service Installations and Equipment (FS251). Information to be reported in an FS251 includes the name and address of the building, the work completion date and the following:

(a) ***Annual inspection.*** Where an annual inspection of FSIs has been conducted, the types (Note 5) and locations of the FSIs and their conditions should be reported;

(b) ***Other works.*** Where other works such as FSI installation or repair works have been conducted, the nature of works conducted, the types and locations of the FSIs and their conditions should be reported; and

(c) ***Defects.*** Where defective FSIs have been identified, the types and locations of the FSIs, the outstanding defects and the remedial actions required should be reported.

Note 5: *In total, there are 35 types of FSIs, each represented by a code (e.g. "28" means sprinkler system).*

FSI and FS251 records

2.6 For the purpose of monitoring FSI owners' compliance with the statutory requirement to conduct annual inspections of their FSIs (see para. 2.3(b)), the FSD needs to maintain the following records:

(a) ***FSI records.*** The FSD needs to maintain records of the FSIs installed in each building in accordance with the building plans. These records show what FSIs in each building are subject to the annual inspection requirement; and

(b) ***FS251 records.*** The FSD needs to maintain records of all FS251s received from FSI contractors. These records show what FSIs in which buildings have been inspected by FSI contractors and when the inspections have been conducted.

By matching FS251s received against the FSI records, the FSD may ascertain whether an annual inspection has been conducted by an FSI contractor for an FSI. Where no FS251 has been received for an FSI, it is a prima facie case of non-compliance with the statutory requirement to conduct annual inspections.

Implementation of a new computer system

2.7 During February 2001 to March 2012, the FSD used a commercial off-the-shelf information system to support its fire protection work, including maintaining FSI records. According to the FSD, due to system limitations, the system could not match the FS251s received against the FSI records. As such, it could not facilitate the identification of the FSIs without FS251 (i.e. non-compliance with the annual inspection requirement).

2.8 In April 2012, the FSD launched a new customised Integrated Licensing, Fire Safety and Prosecution System (LIFIPS — Note 6) to better support its operational needs. The enhanced functions include greater storage and information

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Note 6: *With an approved funding of $33 million in 2007, LIFIPS was developed to improve the efficiency and effectiveness of the licensing, fire safety inspection and prosecution processes.*

sharing capability and more efficient processing of electronic forms. The functions of LIFIPS support maintaining FSI and FS251 records, and matching of these records. Since April 2012, the FSD has maintained details of FS251s received in LIFIPS. According to the FSD, given that most of the FS251s submitted were not using electronic form (see paras. 2.32 to 2.38), substantial manual data inputting efforts have been required in this regard.

2.9 According to the FSD, substantial staff resources have been required to create the FSI records in LIFIPS, as follows:

(a) due to differences in design, the building address and FSI data in the old system were required to be restructured and converted into usable data before they could be transferred to LIFIPS. By April 2013, the FSD had completed the creation in LIFIPS of about 47,000 records of buildings with FSIs installed (Note 7); and

(b) after creating the building and FSI records in LIFIPS, the FSD conducted an exercise to verify their accuracy and completeness, including data updating and rectifying any missing or inaccurate FSI data. As at 15 July 2013, the exercise of updating and verifying the building FSI data was still in progress.

Monitoring maintenance of FSIs

2.10 In April 2013, the FSD used LIFIPS to match the 47,000 building records with the records of some 135,000 FS251s received for the 12 months since April 2012. The FSD found 20,690 buildings (44%) which had not been reported in any of the FS251s, suggesting prima facie that no annual inspection was conducted on any FSI in these buildings. The FSD issued advisory letters (Note 8) to the owners, occupiers or management offices of these buildings to advise them of

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Note 7: *Building records in LIFIPS include building blocks and certain building facilities such as a shopping mall or car park under building blocks. For example, two building records will be created for a building with a shopping mall.*

Note 8: *When any irregularity is identified, the FSD may issue an advisory letter to urge the persons concerned to rectify the irregularity. An advisory letter is not a legal document and no deadline is set for compliance.*

the requirement to commission FSI contractors to conduct annual inspections/ maintenance of the FSIs.

Follow-up of the 2012-13 non-compliance cases

2.11 Audit is concerned that annual inspections had not been conducted for the FSIs in 44% of the buildings in 2012-13. The fire protection in these buildings could be compromised if their FSIs are not in proper working order. However, by 31 August 2013, the FSD was still not able to provide Audit with detailed information on which buildings it had received FS251s after issuing the advisory letters (Note 9). In Audit's view, the FSD needs to closely monitor the follow-up actions taken by the owners, occupiers or management offices of such buildings without FS251 and take appropriate further measures (e.g. issuing warning letters — Note 10) to ensure timely compliance with the statutory requirement of conducting annual inspections of FSIs.

Need to strengthen monitoring

2.12 Audit noted that in the April 2013 exercise, the FSD used the building records in LIFIPS for matching with the FS251 records because it had not yet completed updating and verifying the building FSI data (see para. 2.9(b)). Such matching can only identify buildings without FS251 (no evidence of having annual inspection) but cannot ascertain whether an inspected building has all its FSIs covered in the annual inspection (Note 11). In Audit's view, the FSD needs to complete the updating and verification work as soon as possible, in order that LIFIPS can be used more effectively for monitoring the annual inspections of all FSIs installed in each building by highlighting those not reported in any FS251. For each non-compliance case, it needs to analyse for how long an FSI has not been

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Note 9: *The FSD only indicated that it received a total of 92,430 FS251s during the four months ended 31 July 2013 (after the issue of advisory letters in April 2013), a 61% increase over the 57,531 FS251s received for the corresponding period in 2012.*

Note 10: *A warning letter gives a warning of possible legal action if the irregularity identified is not rectified within a specified period.*

Note 11: *For example, if 20 types of FSIs are installed in a building and only one type has been inspected, the building will be reported in the FS251 for that inspection. Therefore, in the matching exercise the building will not be shown as a building without FS251.*

inspected. In following up on FSIs not inspected, priority should be given to key FSIs not inspected for a long period.

2.13 Ensuring the proper maintenance of FSIs is an important part of the FSD's fire prevention and protection work. The non-compliance rate for annual inspection of FSIs is a useful indicator to reflect the adequacy of the FSD's efforts in publicity, education and law enforcement. In Audit's view, the FSD needs to closely monitor the non-compliance rate to assess whether additional efforts in certain areas are needed to enhance compliance.

Audit recommendations

2.14 **Audit has *recommended* that the Director of Fire Services should:**

(a) **for buildings found without FS251 in 2012-13 to support the annual inspections of their FSIs, closely monitor the follow-up actions of the owners, occupiers or management offices and take appropriate further measures to ensure timely compliance with the statutory annual inspection requirement;**

(b) **complete updating and verifying the LIFIPS data on FSIs installed in buildings as soon as possible, in order that LIFIPS can be used more effectively for monitoring the proper maintenance of all FSIs installed and highlighting FSIs without annual inspection;**

(c) **follow up on FSIs without annual inspection, with priority to be given to key FSIs not having been inspected for a long period; and**

(d) **closely monitor the overall non-compliance rate for annual inspection of FSIs to assess whether additional efforts in certain areas are needed to enhance compliance.**

Response from the Administration

2.15 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) since April 2013, over 30,000 advisory letters have been issued to buildings found without FS251 in the preceding 12 months. Having analysed the majority of those buildings without FS251, the FSD notes that they are mainly small houses. Their fire risk is relatively low and minor FSIs such as fire extinguishers and sand buckets are required to be provided;

(b) the FSD has diverted efforts to quicken the input of FS251s received recently into LIFIPS. It will identify those buildings without FS251 for further enforcement actions;

(c) furthermore, the FSD has uploaded a new poster onto its website in the form of a pop-up to remind the public about the statutory requirement of annual inspection of their FSIs;

(d) the FSD has employed temporary staff to input/update building FSI data in LIFIPS and expects to complete the work in early 2014. Upon completion, the FSD can match FS251s with building FSI records for effective monitoring of maintenance status of all building FSIs and flag up those without annual inspection for enforcement actions. The FSD would adopt a risk-based analysis to prioritise the enforcement actions; and

(e) the FSD will enhance LIFIPS to strengthen the monitoring of the overall non-compliance rate for annual maintenance of FSIs.

Monitoring rectification of defective FSIs

2.16 The FSD has provided its staff with guidelines on monitoring the rectification of defective FSIs reported in FS251s, as follows:

(a) when receiving an FS251, the Task Force would check if there is a report of defects in any major FSI (Note 12). If there is such a report, it shall notify the responsible fire station via LIFIPS within two working days;

Note 12: *Sprinkler system, fire hydrant and hose reel system, fire alarm system, street fire hydrant system, dry riser and smoke extraction system are major FSIs.*

(b) after receiving the notification from the Task Force, the responsible fire station would conduct a risk assessment within 24 hours. If warranted by the situation, it shall issue an advisory letter to urge the FSI owners to rectify the defects and to require them to provide additional fire safety measures during the suspension of the FSI;

(c) the Task Force shall monitor the progress and development of the case. After 74 days from the date of referral to the responsible fire station, if there is no FS251 reporting the complete rectification of the defects, the Task Force would take necessary inspection/enforcement action, such as issuing a warning letter or a Fire Hazard Abatement Notice (FHAN — Note 13), within 18 working days until the defects are rectified; and

(d) where defects in any non-major FSI are reported in an FS251, the Task Force shall within two working days issue an advisory letter to urge the FSI owners to rectify the defects (Note 14).

Monitoring rectification of defects in major FSIs

2.17 Audit analysis of LIFIPS records revealed 7,662 reported cases involving defects in major FSIs which remained outstanding as at 5 August 2013. Table 1 shows an ageing analysis of these cases.

Note 13: *According to the Fire Services (Fire Hazard Abatement) Regulation (Cap. 95F), the Director of Fire Services may, if satisfied of the existence of a fire hazard, issue a FHAN requiring the responsible persons to abate the fire hazard within a specified period. A person who fails to comply with a FHAN commits an offence and shall be liable on conviction to a fine of $100,000 and a further fine of $10,000 for each day during which the offence continues.*

Note 14: *With effect from September 2012, the Task Force is required to check the rectification progress of 3% of the cases involving defects in non-major FSIs annually.*

Table 1

Ageing analysis of outstanding cases involving defects in major FSIs
(5 August 2013)

Outstanding period (Note) (Day)	Number of cases	
100 or less	2,552 (33%)	
101 to 150	973 (13%)	5,110 (67%)
151 to 200	1,069 (14%)	
201 to 250	997 (13%)	
251 to 350	1,375 (18%)	
Over 350	696 (9%)	
Total	7,662 (100%)	

Source: Audit analysis of FSD records

Note: The outstanding period for each case was counted from the date it was created in LIFIPS by the Task Force.

2.18 In accordance with the FSD's guidelines, the responsible fire station should have conducted a risk assessment of each case involving defects in any major FSI (see para. 2.16(b)). However, in 147 of the 7,662 cases shown in Table 1, there was no documentary evidence that such risk assessment had been conducted.

2.19 Table 1 shows that 5,110 cases (67%) had been outstanding for over 100 days. Such cases required inspection/enforcement action (see para. 2.16(c)). Audit examined 20 cases and found that:

(a) in seven cases, after conducting inspections the case officers had proposed different follow-up actions (e.g. issuing a warning letter or FHAN). However, the supervisors had not given any instruction. No further actions had been taken after a lapse of 146 to 299 days;

(b) in three other cases, the supervisors made comments in the files that follow-up inspections were required. However, no such inspections had been conducted after a lapse of 61 to 68 days; and

(c) in the remaining 10 cases, the Task Force had received FS251s reporting that the defects had been rectified. However, it had taken no action to close the cases in LIFIPS after a lapse of 152 to 314 days.

2.20 The lack of timely follow-up actions on major FSIs found with defects could have serious consequence when a fire occurs. In Audit's view, the FSD needs to monitor closely the timely rectification of defects found in major FSIs.

Audit recommendations

2.21 **Audit has *recommended* that the Director of Fire Services should:**

(a) **remind FSD staff of the need to monitor the rectification of defective FSIs in accordance with the guidelines;**

(b) **tighten the controls to ensure that:**

(i) **the responsible fire station conducts a risk assessment of each case involving defects in any major FSI; and**

(ii) **the Task Force closely monitors the rectification of defects in such cases for taking prompt follow-up actions, particularly for cases outstanding for a prolonged period; and**

(c) **take follow-up action on the 20 outstanding cases in paragraph 2.19, which involved defects found in major FSIs.**

Response from the Administration

2.22 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) all concerned officers have been reminded to strictly adhere to the guidelines in following up rectifications of defective FSIs;

(b) the FSD will take measures to ensure that all fire stations follow guidelines in conducting risk assessments of buildings with defects in major FSIs and take appropriate follow-up/enforcement actions;

(c) the FSD will closely monitor the rectification of defects. Since full implementation of LIFIPS in April 2012, the FSD has monitored the maintenance status of FSIs more effectively. As a result, there was an upsurge of cases to be handled by the Task Force and outstanding cases to be followed up. To deal with the additional caseloads, reshuffling of duties among staff has been made to assist the supervisors to expedite follow-up actions. Additional features will be added to LIFIPS to flag up overdue cases for case officers to take follow-up actions; and

(d) the 20 cases identified by Audit have been vetted by supervisors and appropriate follow-up actions have been taken to complete the cases as soon as possible.

Monitoring unwanted alarm cases

2.23 The FSIs in many buildings include an automatic fire detection system to automatically detect a fire (Note 15) and activate an alarm. Where the signal of the system is connected with the FSD's Fire Services Communication Centre (Note 16), the Centre can be alerted and start to respond before anyone in the building reports the incident.

2.24 An unwanted alarm is an alarm generated by the activation of an automatic fire detection system that is not prompted by the smoke, heat, combustion products

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Note 15: *The detectors of the system will detect automatically the presence of smoke, heat, combustion products or flame.*

Note 16: *The Centre, manned round the clock, is responsible for mobilising fire-fighting and ambulance resources.*

or flame of a fire (Note 17). In 2006, given that most of the automatic fire alarms received had been unwanted alarms instead of real fire incidents, the FSD formed a study group to conduct a review to identify ways to reduce the number of unwanted alarms.

2.25 In its report issued in 2006, the study group reported that unwanted alarms had taxed heavily on FSD resources (Note 18) and induced a lot of negative consequences on the community. Apart from disrupting normal fire station routines, training and administrative work of frontline staff, unwanted alarms desensitise the building occupants to the fire alarms and hence defeat the very basic function of the automatic fire detection system to give early warning and induce early evacuation.

2.26 Noting that many of the unwanted alarms were caused by inappropriate human activities (e.g. smoking near a smoke detector), the study group proposed to:

(a) produce an advisory leaflet for distribution by fire station staff to the building management staff/occupants on the spot after attending an unwanted alarm call, with the aim of enhancing their understanding of the causes of unwanted alarms and minimising recurrence; and

(b) make proactive visits to buildings with many unwanted alarm cases to give advice on the good practice in preventing unwanted alarms.

In 2009, the FSD produced the advisory leaflet mentioned in (a) above and started delivering it.

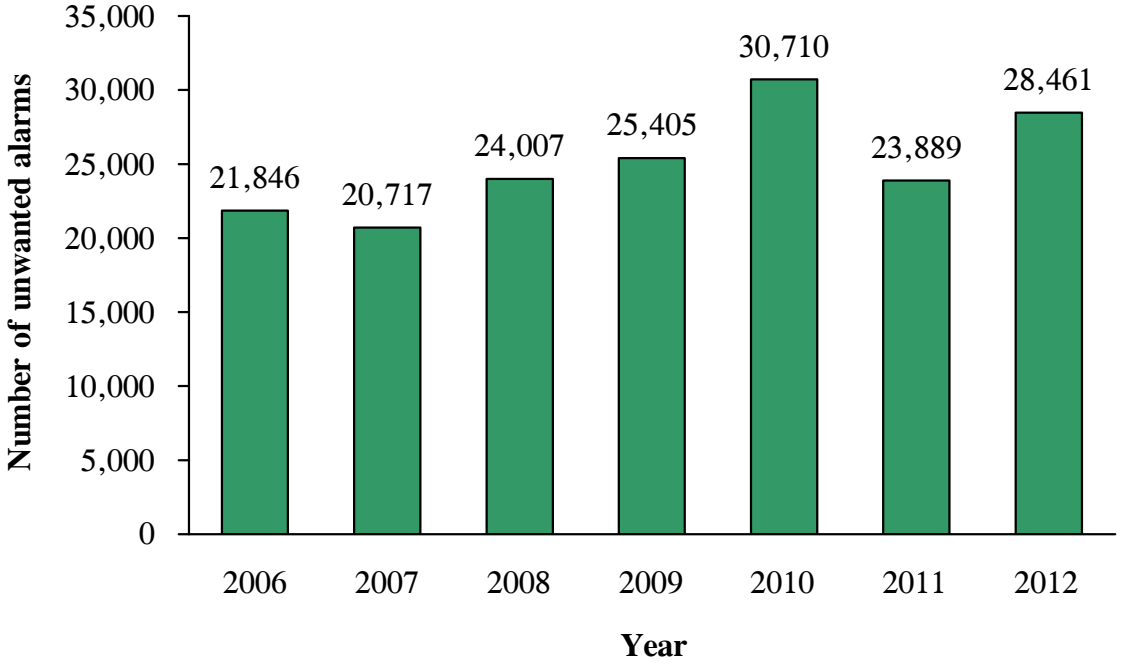
2.27 Figure 3 shows the number of unwanted alarms received in the past seven years.

Note 17: *Unwanted alarms may be triggered by different factors such as faulty systems and extremely humid weather. Unwanted alarms exclude false alarms. False alarms are fire calls received by the FSD but upon arrival there is/has been no fire or other calamity requiring assistance.*

Note 18: *After receiving any fire call, including a "fire" signal from an automatic fire detection system, the FSD will mobilise a fire appliance and at least six FSD staff to attend the call.*

Figure 3

Number of unwanted alarms (2006 to 2012)



Source: *FSD records*

Remarks: *There were 6,182 to 8,210 fires a year during the period (see Figure 1 in para. 1.5).*

Reducing unwanted alarms

2.28 Figure 3 shows that except for 2007, all five subsequent years had more unwanted alarms than 2006, averaging 26,494 (i.e. 21% more than 21,846 in 2006). In Audit's view, in view of the adverse impact of unwanted alarms (see para. 2.25), the FSD needs to conduct a follow-up review to formulate further measures.

2.29 Audit noted that the FSD had not conducted analyses to identify buildings with many unwanted alarm cases. Audit analysis of the 28,461 unwanted alarms in 2012 revealed that:

(a) there were 498 buildings each having 10 or more unwanted alarm cases in 2012; and

(b) of the 498 buildings in (a) above, there were two buildings (Buildings A and B) each having over 100 unwanted alarm cases a year between 2010 and 2012. For Building A (a hotel), in May 2013 the FSD met the hotel management and the FSI contractor, and obtained their commitment to conduct a comprehensive check of the automatic fire detection system with a view to reducing the number of unwanted alarms. For Building B (a composite building), however, no such action was taken.

In Audit's view, the FSD needs to give priority to following up buildings with many unwanted alarm cases, including conducting periodic analyses of such buildings and approaching building owners/occupiers to find out ways to reduce unwanted alarms.

Audit recommendations

2.30 **Audit has *recommended* that the Director of Fire Services should:**

(a) **conduct a follow-up review to formulate further measures to reduce the overall number of unwanted alarms; and**

(b) **conduct regular analyses to identify buildings with many unwanted alarm cases and give priority to following up such cases, with a view to reducing the number of their unwanted alarms.**

Response from the Administration

2.31 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) proactive actions have been taken by the Task Force to investigate premises/buildings with high incidence of unwanted alarms since May 2013;

(b) an internal guideline was issued in September 2013 requiring all fire station commanders to refer repeated unwanted alarm cases to the Task Force for investigation; and

(c) the FSD will set up a working group to review and explore ways to reduce the number of unwanted alarms in the long run.

Promoting use of electronic form

2.32 As mentioned in paragraph 2.8, one of the enhanced functions of LIFIPS is more efficient processing of electronic forms. With effect from 2012, an FSI contractor may input relevant data into an electronic form of FS251, print the FS251 (together with pages containing barcodes) and then submit a copy to the FSD (Note 19). The FSD will then scan the barcodes to input the FS251 data into LIFIPS electronically, saving the manual data inputting efforts (Note 20).

2.33 The FSD's main promotional activities on the use of the electronic form of FS251 included the following:

(a) ***December 2011.*** The FSD informed FSI contractors that LIFIPS would be launched in the first quarter of 2012, and advised them to use the electronic form of FS251 to facilitate data input into LIFIPS and for better FSI records management (Note 21);

(b) ***January 2012.*** The FSD organised two briefing sessions for FSI contractors to help them gain more insight into the electronic form of FS251 and other online services provided by LIFIPS;

(c) ***July 2012.*** The FSD issued letters to FSI contractors to encourage them to switch to the electronic form of FS251; and

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Note 19: *According to the FSD, online submission of FS251s is supported by LIFIPS but is not allowed under the Fire Service (Installations and Equipment) Regulations, which specify that only a "copy" of an FS251 shall be forwarded to the FSD. This issue can be resolved if the proposed legislative amendment of requiring FSI contractors to have their FS251s endorsed by the FSD before issuing them to FSI owners is passed (see paras. 5.5(e) and 5.6).*

Note 20: *The electronic form is free of charge while the printed forms cost $62 per book of 100 forms.*

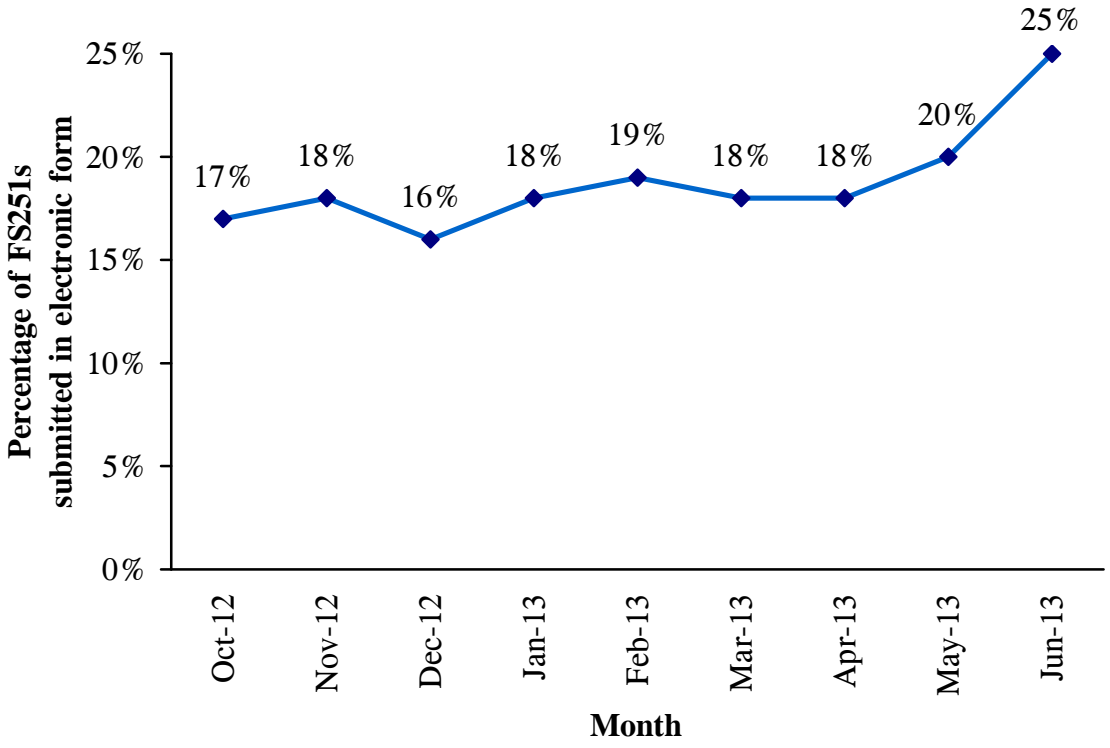
Note 21: *During the design of the electronic form, the FSD had consulted the FSI contractor's association.*

(d) ***April and June 2013.*** The FSD visited two major FSI contractors to demonstrate the use of the electronic form of FS251 and explain the benefits of using it.

2.34 Figure 4 shows the use of the electronic form of FS251 by FSI contractors.

Figure 4

Use of electronic form of FS251 by FSI contractors (October 2012 to June 2013)



Source: FSD records

2.35 In 2007 when seeking funding approval for implementing LIFIPS, the FSD informed the Finance Committee of the Legislative Council that it estimated that over half of the FSI contractors might submit their FS251s by electronic means. However, as shown in Figure 4, in June 2013 only 25% of the FS251s received were using electronic form. In Audit's view, the FSD needs to step up efforts to promote the use of the electronic form of FS251.

2.36 According to Audit analysis, in June 2013, 132 (69%) of the 190 major FSI contractors (Note 22) submitted their FS251s not using the electronic form. The FSD, in particular, needs to find out the reasons for not using the electronic form and take appropriate measures to encourage them to adopt it.

Audit recommendations

2.37 **Audit has *recommended* that the Director of Fire Services should:**

(a) **step up efforts to promote the use of the electronic form of FS251; and**

(b) **find out the reasons why many major FSI contractors did not use the electronic form of FS251 and take appropriate measures to encourage them to adopt it.**

Response from the Administration

2.38 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the use of electronic form of FS251 is not mandatory at present. Some FSI contractors are reluctant to use it mainly because it cannot seamlessly match their business operational mode; and

(b) in addition to organising more briefings and visits to the FSI contractors, the FSD will consider further means to promote the adoption and usage of the electronic form of FS251.

Note 22: *For analysis purpose, an FSI contractor who submitted 100 or more FS251s during the year ended 30 June 2013 was regarded as a major FSI contractor. The FS251s submitted by major FSI contractors during the period accounted for 92% of the FS251s received by the FSD.*

PART 3: MONITORING LICENSED PREMISES

3.1 This PART examines the FSD's monitoring work in ensuring that licensed premises (see para. 3.2) comply with the fire safety requirements and related fire protection work, with focus on:

(a) fire safety requirements on food premises and checking compliance (paras. 3.5 to 3.13);

(b) monitoring FSIs in licensed premises (paras. 3.14 to 3.19);

(c) inspections of licensed premises (paras. 3.20 to 3.25); and

(d) combating illicit fuel filling activities (paras. 3.26 to 3.33).

3.2 Licensed premises mean the premises in which the relevant authorised activities specified in a licence may be carried on. The following divisions of the Licensing and Certification Command are responsible for monitoring the fire safety of such premises:

(a) the Dangerous Goods Division handles premises for storage or manufacture of dangerous goods and storage of timber, and vehicles for conveyance of dangerous goods. The FSD is the licensing authority for these activities; and

(b) the two Regional Offices (i.e. Hong Kong and Kowloon West, and the New Territories and Kowloon East) assist in monitoring the fire safety of premises under the purview of other Government licensing authorities, including the Food and Environmental Hygiene Department (FEHD) for certain types of food premises (e.g. restaurants, factory canteens and food factories), karaoke establishments in restaurants, theatres and cinemas, the Education Bureau for schools (Note 23) and the Social Welfare Department for child care centres.

Note 23: *In this context, schools refer to non-purposely built schools and non-local higher and professional education courses operating in non-exempted premises.*

3.3 A licence applicant will not be granted a licence unless the premises concerned comply with, among others, the fire safety requirements issued by the FSD. The FSD formulates the requirements based on the results of an on-site fire risk assessment. It checks compliance with the requirements by conducting verification inspections and vetting the supporting documents submitted by the applicant.

3.4 As at June 2013, according to FSD records, there were about 33,200 licensed premises, including 21,100 food premises.

Fire safety requirements on food premises and checking compliance

3.5 The FSD has promulgated standard fire safety requirements on various types of food premises, including FSI provision and other requirements, for reducing the probability, mitigating the effect and limiting the spread of fire. In respect of each licence application, the FSD will conduct an on-site fire risk assessment to formulate customised fire safety requirements for issuing to the licence applicant for compliance.

3.6 In accordance with the Food Business Regulation (Cap. 132X), the FEHD may, upon application, grant a provisional licence for carrying on a food business in the premises concerned provided that some basic requirements have been complied with, including the submission of a certificate of compliance with the fire safety requirements (Note 24). The provisional licensing system is intended to be a business-facilitation measure. The provisional licence, valid for six months, enables the licensee to carry on the food business on a provisional basis, pending the issue of a full licence. However, the FEHD may cancel the provisional licence if non-compliance with any fire safety requirements or other specified requirements is found.

3.7 The FSD has provided its staff with the following guidelines on checking food premises' compliance with the fire safety requirements:

Note 24: *The certificate should be signed by qualified persons as specified, including FSI contractors.*

(a) FSD staff should conduct a verification inspection within seven working days after receipt of the FEHD's notification of the grant of a provisional licence;

(b) where the verification inspection reveals any fire safety requirements not fully complied with, a letter should be issued to advise the provisional food business licensee to take immediate remedial action and report compliance upon completion in order that the FSD can conduct a follow-up inspection. In the case of non-compliance with major fire safety requirements (e.g. failure to meet flammability standards for polyurethane foam filled mattress and upholstered furniture items), the FEHD should be informed in parallel for issuing a warning letter or cancelling the provisional licence (Note 25); and

(c) fire services certificates should be issued within seven working days after confirmation of compliance with all the fire safety requirements.

Delays in conducting verification inspections

3.8 Audit examined 20 food business cases with provisional licences granted during the year ended 30 June 2013. In 15 cases, verification inspections were conducted within seven working days after receipt of the FEHD's notification of the grant of a provisional licence thus complying with the FSD's guidelines. However, in the other five cases, there were delays of 4 to 28 working days in conducting the verification inspections. In Audit's view, the FSD needs to remind its staff to conduct verification inspections promptly in accordance with its guidelines.

Handling non-compliance with fire safety requirements

3.9 In all the 20 cases (see para. 3.8), the FSD specified the following fire safety requirements in respect of polyurethane foam:

Note 25: *According to the FEHD policy, in the case of the first breach of a fire safety requirement, a warning letter will be issued to warn the provisional food business licensee to take action to rectify the breach within 12 days. In the case of failure to comply with a warning to rectify the breach of the fire safety requirement, or a subsequent breach of the same requirement, the provisional licence will be cancelled.*

(a) all polyurethane foam filled mattresses and upholstered furniture should conform to the specified standards; and

(b) invoices from manufacturers/suppliers and test certificates from testing laboratories indicating that the polyurethane foam filled mattresses and upholstered furniture have complied with the specified standards should be produced for verification.

The FSD's verification inspections revealed full compliance with the fire safety requirements in only three cases. In the other 17 cases, the provisional food business licensees could not produce the invoices and/or test certificates mentioned in (b) above.

3.10 In all the 17 non-compliance cases, the FSD issued letters to advise the provisional food business licensees to take immediate remedial action. However, it informed the FEHD in parallel in seven cases only and there were no documented reasons for not doing the same for the other 10 cases (Note 26).

3.11 As mentioned in paragraph 3.6, the provisional licensing system enables the licensee to carry on food business on a provisional basis, pending the issue of a full licence. However, for public safety, it is important to ensure that no food business is allowed to operate in premises not meeting the essential fire safety requirements. In Audit's view, the FSD needs to ensure that its staff handle cases of non-compliance consistently in accordance with the laid-down guidelines (see paras. 3.9 and 3.10).

Audit recommendations

3.12 **Audit has *recommended* that the Director of Fire Services should:**

Note 26: *Audit noted that in those cases whereby the FEHD had issued warning letters, the licensees generally submitted the required invoices and/or test certificates in shorter time.*

(a) **remind FSD staff to conduct verification inspections of food business premises granted with provisional licences promptly in accordance with the FSD's guidelines; and**

(b) **ensure that FSD staff handle cases of non-compliance with fire safety requirements by provisional food business licensees consistently.**

Response from the Administration

3.13 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the FSD has issued an internal guideline with effect from 30 August 2013 that inspection officers should liaise with the provisional food business licensees or their representatives to schedule a verification inspection within seven working days after the receipt of notifications of the grant of provisional licences. If the inspection could not be carried out within seven working days, the reasons should be documented;

(b) the FSD and FEHD commissioned a consultant in 2012 to look into, among others, the feasibility of requiring provisional licence applicants to submit a full set of polyurethane foam documents to the FEHD before a provisional licence is issued. It was found that there were genuine difficulties for the applicants to obtain a full set of the required documents because the furniture supplier would keep those documents until the applicants completed the outstanding payments; and

(c) in the light of the trade's concerns, the FSD and FEHD have worked out an alternative that after the issue of provisional licence by the FEHD, the FSD would inspect the premises within seven days. During the FSD inspection, the licensee would need to provide a copy of delivery note (indicating that the furniture items are made from certified material, etc.). The FSD would then grant a six-week grace period for the submission of the concerned invoices and test certificates. The Food and Health Bureau/FEHD plan to consult the relevant Legislative Council Panel within the fourth quarter of 2013 with a view to implementing the measure as early as possible.

Monitoring FSIs in licensed premises

3.14 Same as for FSIs installed in buildings, the owner of any FSI in licensed premises is required to arrange annual inspections of the FSI, and an FSI contractor is required to submit an FS251 to the FSD within 14 days after completing the inspection work (see paras. 2.3 and 2.4). However, the FSD has not used LIFIPS to monitor the compliance with the statutory requirement of conducting annual inspections of FSIs in licensed premises. As at July 2013:

(a) the input of the FSI data into LIFIPS was still in progress for food premises and that for other licensed premises had not commenced;

(b) FS251s covering licensed premises had not been completely input into LIFIPS (Note 27); and

(c) as a result, LIFIPS could not be used to match the FSI data of licensed premises with the FS251s received, to identify FSIs not supported by FS251s.

Monitoring FSIs through compliance checks

3.15 The FSD checks the compliance of premises for storage or manufacture of dangerous goods and storage of timber with the fire safety requirements, including the annual inspections of FSIs, before renewing their licences annually. For some licensed premises (e.g. cinemas), the licensees are also required to renew their licences with the licensing authorities annually. In these cases, the FSD examines their FS251s as part of its compliance check. However, the FSD's monitoring of FSIs for the following types of premises has the following inadequacies:

(a) for food premises (which do not require the FSD's endorsement of compliance with fire safety requirements for licence renewal) and schools and child care centres (both not requiring renewal of registration), the FSD does not conduct compliance check; and

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Note 27: *As at July 2013, the two Regional Offices had about 3,280 FS251s not yet input into LIFIPS. The Dangerous Goods Division does not input FS251s into LIFIPS.*

(b) for premises requiring the FSD's endorsement for biennial licence renewal (e.g. karaoke establishments), the FSD conducts compliance check only in the second year of the licence period.

3.16 Audit examination of 20 licensed premises selected from the types of premises mentioned in paragraph 3.15(a) and (b) revealed cases of non-compliance with the requirement to conduct annual inspections of FSIs. Of the 20 premises, the FSD did not receive any FS251 in respect of 14 in 2012-13, 18 in 2011-12, 14 in 2010-11 and 12 in 2009-10. For seven premises in particular, the FSD did not receive any FS251 in all the four years (see Table 2). For each non-compliance case, there was no documentary evidence that the FSD had taken any enforcement action (e.g. issuing a warning letter).

Table 2

Audit examination of 20 licensed premises
(2009-10 to 2012-13)

Type of premises	Number of premises				
	FS251 not received for 1 year	FS251 not received for 2 years	FS251 not received for 3 years	FS251 not received for all 4 years	Total
Food premises	1	3	3	3	10
School	–	2	–	2	4
Child care centre	–	–	2	2	4
Karaoke establishment	–	2	–	–	2
Total	1	7	5	7	20

Source: Audit analysis of FSD records

3.17 Ensuring the proper maintenance of FSIs is an important part of the FSD's fire prevention and protection work. The non-compliance of licensed premises with the requirement to conduct annual inspections revealed in Audit sample check suggests that more work should be done in this regard.

Audit recommendations

3.18 **Audit has *recommended* that the Director of Fire Services should:**

(a) **review the monitoring mechanism for the FSIs in licensed premises;**

(b) **based on the review results in (a) above, determine how to make effective use of LIFIPS to monitor the maintenance of FSIs in licensed premises; and**

(c) **take enforcement action as appropriate in cases of non-compliance with the statutory annual FSI inspection requirement (including those mentioned in para. 3.16).**

Response from the Administration

3.19 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the FSD is building a database in LIFIPS for FSIs of licensed premises starting from general restaurants, light refreshment restaurants and factory canteens to facilitate monitoring of the FSIs in licensed premises. The database is expected to be completed in the first quarter of 2014. The FSD will then review the effectiveness and efforts with a view to making effective use of LIFIPS to monitor the maintenance of FSIs in all licensed premises, having regard to the available resources;

(b) the FEHD plans to impose fire safety requirement for renewal of licence such that licence would only be renewed when there are valid FS251s of the premises. The Food and Health Bureau/FEHD plan to consult the relevant Legislative Council Panel within the fourth quarter of 2013 with a view to implementing the measure as early as possible; and

(c) the FSD would follow up and take appropriate enforcement actions against cases of non-compliance with the statutory requirement to conduct annual inspections of FSIs, including the 20 cases examined by Audit.

Inspections of licensed premises

3.20 As part of its monitoring work on licensed premises, the FSD conducts inspections of selected premises proactively to identify whether there are fire hazards (e.g. obstruction or locking of means of escape and defective FSIs or lack of maintenance of FSIs). Where fire hazards are identified, FSD staff are required to take enforcement action (e.g. issuing a FHAN) against the operator, and in parallel inform the licensing authority and require the licensee to take remedial action. Since 2012, the FSD has adopted a risk-based approach for conducting inspections, so that higher risk premises are subject to more frequent inspections. Table 3 shows the target and actual numbers of inspections of food premises, schools and child care centres in 2012 and 2013.

Table 3

Inspections of licensed premises
(2012 and 2013)

Type of premises	Number of inspections			
	2012		2013	
	Target	Actual	Target	Actual (up to August)
Food premises with high fire risk (Note 1)	300	236	500	376
Food premises with medium fire risk (Note 1)	80	96	230	175
School and child care centre (Note 2)	120	86	120	93
Total	500	418	850	644

Source: FSD records

Note 1: The FSD classified the fire risks of food premises based on a number of criteria, including the location and floor area of the premises and whether there were sealed windows or combustible partitions. It selected food premises in each class randomly for inspection.

Note 2: The FSD selected schools and child care centres randomly for inspection.

3.21 According to the FSD records, as at July 2013, there were about 2,590 food premises with high fire risk, 18,200 food premises with medium fire risk and 4,970 schools and child care centres, totalling 25,760 premises. Table 3 shows that only 418 premises were inspected in 2012 and 850 premises were planned to be inspected in 2013. Audit examination revealed room for improvement in the allocation of inspection resources and the selection of premises for inspection. Details are in paragraphs 3.22 and 3.23.

Allocation of inspection resources

3.22 As shown in Table 3, for both 2012 and 2013, the FSD has set a higher inspection target for high-risk food premises. In 2012, the FSD actually conducted 236 inspections of high-risk food premises, 64 less than the target of 300. However, for medium-risk food premises, the FSD conducted 96 inspections, 16 more than the target of 80. This suggested room for improvement in allocating inspection resources. In Audit's view, in line with the risk-based approach, the FSD should have allocated more resources to high-risk food premises to help meet the target number of inspections.

Selection of premises for inspection

3.23 Audit examined 20 inspections conducted during the year ended 30 June 2013. In four cases, Audit noted the following:

(a) ***Selected premises not in operation.*** In three cases of school inspection, the FSD officers found that there were no schools in operation thus not achieving the inspection objectives. For one of the three cases, the Education Bureau had already informed the FSD in 2008 of the cancellation of the provisional registration of the school, and for the other two cases, the Education Bureau had not approved the school registration applications. In Audit's view, the FSD needs to check as far as possible that selected licensed premises are really in operation before conducting inspections; and

(b) ***Premises re-inspected within a short period.*** No irregularities were found in an inspection of a school. The FSD records however showed that the school was inspected again some five months later, again without irregularities found. There were no documented reasons for inspecting the school twice within a short period.

Audit recommendations

3.24 **Audit has *recommended* that the Director of Fire Services should:**

(a) **follow the risk-based approach in allocating inspection resources and give priority to licensed premises with a high fire risk;**

(b) **establish procedures to ensure that licensed premises selected for inspection are really in operation; and**

(c) **ascertain the reasons for inspecting the same school twice within a short period, as mentioned in paragraph 3.23(b), and take appropriate improvement measures.**

Response from the Administration

3.25 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the FSD, based on the 2012 inspection results, adjusted its 2013 inspection targets so that more inspections of premises with comparatively higher risk could be carried out. The targets were worked out with a view to adopting a proactive risk-based monitoring mechanism with its existing tight resources. The FSD will regularly review its risk-based approach and inspection targets, and follow the risk-based approach in allocating inspection resources;

(b) an internal guideline has been issued to require inspection officers to review/vet the case file in detail ensuring that the premises selected randomly for inspection are in operation before carrying out physical inspection;

(c) the FSD will study with various licensing authorities the feasibility of a simple mechanism for periodically informing the FSD about those licensed premises which were no longer in operation; and

(d) the FSD has completed the investigation into the case of inspecting the same school twice within a short period. It was found that the concerned officer was not familiar with the functions and available information in LIFIPS. To avoid recurrence of similar incidents, internal guidelines were issued to all inspection officers in September 2013.

Combating illicit fuel filling activities

3.26 Fuel oils, including petrol and diesel, are one type of dangerous goods controlled by the Dangerous Goods Ordinance (Cap. 295). They are inflammable and catch fire easily if stored improperly. The FSD is responsible for licensing their manufacture, storage and conveyance. Apart from ensuring that the licensees comply with the fire safety requirements, the FSD takes measures to combat illicit fuel filling activities (Note 28). Illicit fuel filling stations may pose significant fire risks particularly when they are set up in urban residential areas.

3.27 Depending on the mode of operation, illicit fuel filling activities may be in breach of a number of provisions under the purview of the FSD, including:

(a) storage of dangerous goods in excess of exempt quantity without a licence, contravening the Dangerous Goods Ordinance;

(b) storage of dangerous goods in bulk without approval or fuelling of vehicles directly from tank wagons, contravening the Dangerous Goods (General) Regulations (Cap. 295B); and

(c) illegal possession of dangerous goods in premises for the purpose of a business of supplying fuel to a motor vehicle, contravening the Fire Services (Fire Hazard Abatement) Regulation.

Note 28: *The work to combat illicit fuel filling activities is carried out mainly by the Dangerous Goods Division. According to the FSD, the strength of 30 staff in the Division was established for coping with its licensing work. For combating illicit fuel filling activities effectively, the Division has redeployed four staff to form a dedicated team to carry out the required detection, investigation and enforcement duties.*

3.28 Table 4 shows some statistics on combating illicit fuel filling activities.

Table 4

Statistics on combating illicit fuel filling activities
(January 2010 to June 2013)

	2010	**2011**	**2012**	**2013 (up to June)**
Complaints and inspections				
Number of complaints received	182	193	104	66
Number of inspections conducted in respect of the complaints	327	392	217	105
Offences under the Dangerous Goods Ordinance or the Dangerous Goods (General) Regulations				
Number of convicted cases	9	29	7	12
Average fine	$1,478	$2,103	$2,013	$1,392
Offences under the Fire Services (Fire Hazard Abatement) Regulation				
Number of convicted cases	27	33	47	16
Average fine	$2,000	$2,700	$17,688	$14,063

Source: FSD records

Forfeiture of illicit fuel

3.29 The FSD has explored and adopted various approaches to combat illicit fuel filling activities. For example, to avoid alerting perpetrators of illicit fuel filling stations, plain-clothes staff of the FSD would observe the activities before necessary enforcement action are taken by uniformed staff. To achieve greater deterrence, the FSD has tightened its policy of revoking licences granted to owners of tank wagons involved in illicit fuel filling activities. The FSD also conducts joint operations with the Customs and Excise Department and the Hong Kong Police Force regularly to raid illicit fuel filling stations to combat against evasion of duty

on the sale of dutiable fuel (Note 29) and illegal storage of petrol or diesel. Where any illicit fuel filling activities might constitute a breach of lease conditions, the FSD would inform the Lands Department to take necessary enforcement action. In addition, the FSD is liaising with oil companies to stop fuel oil supply to operators involved in illicit fuel filling activities. It also works with cross harbour tunnel companies to conduct surprise inspections to curb transporting of fuel in bulk by unapproved goods lorries.

3.30 Similar to other crimes, inflicting financial damages on the operators may be an effective way to combat illicit fuel filling activities. As shown in Table 4, the fines imposed on offenders averaged $1,392 to $17,688. Compared to the potential profits from selling illicit fuel, the amounts might not create a sufficient deterrent effect. According to the Dangerous Goods Ordinance, a magistrate may order a forfeiture of the dangerous goods with respect to which any offence against the Ordinance has been committed, whether any person has been charged with such offence or not. However, the FSD did not apply for such orders during the period concerned (i.e. January 2010 to June 2013).

3.31 In August 2013, upon enquiry, the FSD informed Audit that:

(a) the FSD had included the forfeiture of illicit fuel in its action plan; and

(b) some practical issues (including the need for identifying suitable storage space and the handling charges involved in engaging contractors to handle a large quantity of fuel seized) had to be addressed.

In Audit's view, in view of the significant fire risks posed by illicit fuel filling activities, the FSD needs to regularly review the effectiveness of the measures taken to combat such activities and take additional measures (e.g. forfeiture of illicit fuel) where necessary.

Note 29: *Evasion of duty may be in breach of Dutiable Commodities Ordinance (Cap. 109) which is under the purview of the Customs and Excise Department.*

Audit recommendations

3.32 **Audit has *recommended* that the Director of Fire Services should:**

(a) **regularly review the effectiveness of the measures taken to combat illicit fuel filling activities; and**

(b) **take additional measures to combat illicit fuel filling activities where necessary.**

Response from the Administration

3.33 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the FSD has been conducting regular reviews of the effectiveness of the measures taken to combat illicit fuel filling activities. The latest reviews in May and July 2013 revealed that the package of measures being adopted by the FSD had achieved the expected results with increased enforcement actions taken in the first half of 2013. The FSD will continue to review the effectiveness of the measures taken; and

(b) the FSD will consider and take additional measures (such as forfeiture actions if situation warrants) to combat illicit fuel filling activities.

PART 4: MONITORING VENTILATING SYSTEMS

4.1 This PART examines the FSD's monitoring work in ensuring the proper maintenance of ventilating systems in buildings and premises, focusing on:

(a) monitoring maintenance of ventilating systems (paras. 4.4 to 4.10); and

(b) inspections of ventilating systems with defects (paras. 4.11 to 4.16).

4.2 The Ventilation Division of the Licensing and Certification Command is responsible for monitoring the fire safety of ventilating systems (Note 30) in buildings and licensed premises (including scheduled premises referred to in para. 4.3). As at June 2013, it maintained records of 51,200 ventilating systems (2,600 in buildings and 48,600 in premises).

Maintenance of ventilating systems

4.3 The Building (Ventilating Systems) Regulations (Cap. 123J) apply to ventilating systems that embody the use of ducting or trunking which passes from one compartment of the building to another. The Ventilation of Scheduled Premises Regulation (Cap. 132CE) applies to ventilating systems in scheduled premises (Note 31). These two categories of ventilating systems are subject to the following maintenance provisions:

(a) every damper, filter and precipitator in any ventilating system shall be inspected at intervals not exceeding 12 months by a specialist contractor registered with the BD; and

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Note 30: *A ventilating system, comprising air blowers and air ducts, maintains air movement in an indoor environment. Filters and/or precipitators installed in the system will filter the air passing through them so as to improve the air quality. When an air duct passes through compartment walls/floors, fire dampers shall be fitted in the duct to curb the spread of fire and smoke through the air duct system in case of fire.*

Note 31: *Scheduled premises comprise restaurants, dancing establishments, theatres, cinemas, funeral parlours and factory canteens licensed by the FEHD.*

(b) a specialist contractor who inspects any ventilating system shall within 14 days of such inspection issue to the person on whose instructions the inspection was carried out a certificate and send a copy thereof to the FSD.

In practice, the contractors are given a standard form to prepare the certificate. They are required to report the defects observed, if any.

Monitoring maintenance of ventilating systems

4.4 Audit examination of the monitoring of the maintenance of ventilating systems revealed a number of issues requiring the FSD's attention. Details are in paragraphs 4.5 to 4.8.

4.5 ***Incomplete records of ventilating systems in buildings.*** The FSD started in 2001 to create records of ventilating systems installed in new buildings. For ventilating systems installed in pre-2001 buildings, records are created when they are identified from any inspection certificates received. For licensed premises in pre-2001 buildings, the FSD creates records of ventilating systems installed in such premises in connection with the licensing work (Note 32). As such, there may be incomplete records of ventilating systems installed in pre-2001 buildings if no inspection certificate is received. Such unrecorded systems are not subject to the FSD's monitoring.

4.6 ***Record matching not conducted.*** Unlike FSIs in buildings (see para. 2.10), due to system bugs, the FSD cannot use LIFIPS to match ventilating system records with the inspection certificate records so as to identify all ventilating systems without inspection certificate (i.e. non-compliance with the

Note 32: *According to the FSD, most ventilating systems in pre-2001 buildings having higher fire safety concerns are installed in licensed premises. These systems are monitored by the FSD in connection with its licensing work. The FSD will liaise with the licensing authorities to study the feasibility of establishing a comprehensive database for all ventilating systems on a licensed premises basis irrespective of the completion date and nature of the buildings. As a first step, the FSD has since July 2013 commenced verifying and updating the ventilating system records of all licensed food premises and expects to complete the work in the first quarter of 2014.*

statutory requirement to conduct annual inspections). In this connection, Audit noted that the FSD maintained records of some 51,200 ventilating systems (Note 33) but received only 17,506 inspection certificates during April 2012 to June 2013 (see para. 4.8).

4.7 ***No follow-up of ventilating systems not supported by inspection certificates.*** According to the FSD's guidelines, if an inspection certificate has not been received within 30 days after one year from the latest annual inspection of a ventilating system, a warning letter shall be issued to the owner. If an inspection certificate has still not been received within another 30 days, legal action shall be contemplated. Audit examination of 602 cases with the latest inspection conducted during April to June 2012 revealed that no inspection certificate had been received for 60 cases (10% of 602 cases) up to August 2013 (when over 30 days had elapsed after one year from the latest inspection). However, the FSD had not issued any warning letter or taken any follow-up action.

4.8 ***Delays in inputting inspection certificates.*** During April 2012 to June 2013, the FSD received 17,506 inspection certificates. As at 30 June 2013, it had only input 13,244 inspection certificates into LIFIPS, but had not done so for the remaining 4,262 certificates. For effective monitoring, the FSD needs to expedite its inputting work.

Audit recommendations

4.9 **Audit has *recommended* that the Director of Fire Services should:**

(a) **review the issues relating to monitoring the maintenance of ventilating systems identified by Audit in paragraphs 4.5 to 4.8; and**

(b) **take appropriate measures to improve the monitoring of the maintenance of ventilating systems.**

Note 33: *As at 2 July 2013, 40,858 of the 51,200 ventilating system records were maintained in LIFIPS. The FSD considers that some of the 51,200 records could turn out to be obsolete (as some restaurants could have closed business) after the verification and updating work mentioned in Note 32 to paragraph 4.5 is completed.*

Response from the Administration

4.10 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the FSD is reviewing the issues and has been taking/will take appropriate actions to address them. For example, warning letters have been issued to owners of the ventilating systems for which no inspection certificates were received (see para. 4.7) and the system bugs that inhibit the record matching function are expected to be fixed by October 2013; and

(b) after the system bugs of LIFIPS have been rectified and the ventilating system database verified and updated, LIFIPS should be able to automatically generate periodic reports of premises/buildings with their ventilating system inspection overdue. Monitoring of ventilating system inspections will become more efficient and effective.

Inspections of ventilating systems with defects

4.11 The FSD has provided its staff with the following guidelines on checking the accuracy of inspection certificates and handling cases where the contractors have reported defects in the ventilating systems:

(a) on receipt of an inspection certificate reporting defects in the ventilating system, a warning letter requiring rectification of the defects shall be issued;

(b) 2.5% of the inspection certificates shall be randomly selected for conducting inspections of the ventilating systems. Of these inspection certificates, about 80% shall be cases reporting defects in the ventilating systems and 20% shall be cases without defects reported; and

(c) if an inspection found that any defects in the ventilating system constitute a fire hazard, a FHAN should be issued.

4.12 During April 2012 to June 2013, the FSD conducted a total of 429 inspections of ventilating systems to check the accuracy of the inspection certificates, comprising 72 cases (17%) with defects reported and 357 cases (83%) without defects reported. Of the 72 cases with defects reported, in 18 cases the FSD conducted inspections beyond 50 days after receiving the inspection certificates (see Table 5).

Table 5

Inspections of ventilating systems with defects
(April 2012 to June 2013)

Time lapsed between date of FSD inspection and date of receiving inspection certificate (Day)	Number of cases
5 or less	1 (2%)
6 to 10	3 (4%)
11 to 20	5 (7%)
21 to 30	24 (33%)
31 to 50	21 (29%)
Over 50	18 (25%)
Total	72 (100%)

Source: Audit analysis of FSD records

4.13 As mentioned in paragraph 2.16(b), for defects in a major FSI, the responsible fire station is required to conduct a risk assessment within 24 hours. However, in the case of defects in ventilating systems, there is no similar requirement on the Ventilation Division to conduct risk assessment. As serious defects in ventilating systems may constitute a higher fire risk, the FSD needs to consider whether the Ventilation Division should be similarly required to conduct risk assessments.

4.14 The FSD's guidelines on selection of inspection certificates for conducting inspections of the ventilating systems (see para. 4.11(b)) specify that:

(a) random selection method shall be used; and

(b) of the inspection certificates selected, about 80% shall be cases reporting defects in the ventilating system.

The requirement in (b) above may not always be achievable as seen in the FSD's inspections from April 2012 to June 2013 when only 17% of the selected inspection certificates were cases reporting defects (see para. 4.12). In Audit's view, the FSD needs to review the inspection guidelines and take improvement measures (e.g. rationalising the sample selection method).

Audit recommendations

4.15 **Audit has *recommended* that the Director of Fire Services should:**

(a) **explore the need for requiring the Ventilation Division to conduct prompt risk assessments and inspections when receiving inspection certificates reporting serious defects in ventilating systems; and**

(b) **improve the guidelines for inspecting ventilating systems.**

Response from the Administration

4.16 The Director of Fire Services agrees with the audit recommendations. He has said that the FSD is considering requiring the Ventilation Division or other suitable units to conduct prompt risk assessments and inspections when receiving inspection certificates reporting serious defects in ventilating systems. Relevant guidelines will be reviewed and improved.

PART 5: REGISTRATION AND MONITORING OF FIRE SERVICE INSTALLATION CONTRACTORS

5.1 This PART examines the following issues relating to the registration and monitoring of FSI contractors:

(a) improving the FSI contractor registration scheme (paras. 5.4 to 5.9); and

(b) monitoring FSI contractors (paras. 5.10 to 5.18).

5.2 As mentioned in paragraph 2.4(a), the Fire Service (Installations and Equipment) Regulations specify that FSIs shall be installed, maintained, inspected or repaired only by FSI contractors registered with the FSD. The registration scheme for FSI contractors is governed by the Fire Service (Installation Contractors) Regulations. The Regulations contain the following provisions:

(a) ***Classes of contractors.*** FSI contractors are classified into three classes (Classes 1 to 3) according to the work that they may undertake (Note 34). While a person, company or firm may apply as a Class 1 or Class 2 contractor, only a person may apply as a Class 3 contractor;

Note 34: *The work that the FSI contractors in each class may undertake is as follows:*

(a) ***Class 1.*** *Install, maintain, repair and inspect any FSI (other than portable equipment) which contains an electrical circuit or other apparatus for the detection and warning, by alarm or otherwise, of smoke or fire;*

(b) ***Class 2.*** *Install, maintain, repair and inspect any FSI (other than portable equipment) which contains:*

(i) pipes and fittings designed or adapted to carry water or some fire extinguishing medium; or

(ii) any type of electrical apparatus other than those specified in Class 1; and

(c) ***Class 3.*** *Maintain, repair and inspect portable equipment.*

(b) ***Minimum qualifications for registration.*** For registration as a Class 1 or Class 2 FSI contractor, the applicant or at least one of the applicant's directors, employees or partners should hold the specified qualifications (e.g. a degree in electrical engineering for Class 1, a diploma or higher certificate in electrical engineering and a Grade I plumber's licence for Class 2). For Class 3, the applicant should satisfy the FSD at a written examination and at an interview that he has adequate knowledge of the function and maintenance of portable equipment;

(c) ***Termination of service of qualified person.*** An FSI contractor registered by virtue of the qualifications of a director, employee or partner should notify the FSD within 14 days after termination of service of the director, employee or partner. The FSD should remove the name of the contractor from the register; and

(d) ***Disciplinary proceedings.*** If an FSI contractor has been convicted of an offence or has been guilty of improper conduct or negligence in the installation, maintenance, repair or inspection of any FSI, the FSD may refer the matter to the disciplinary board (Note 35). After inquiry, the disciplinary board may order that the name of the contractor be removed from the register permanently or for such period as it thinks appropriate, or that the contractor be reprimanded.

5.3 As at 11 July 2013, there were a total of 777 FSI contractors. The numbers of contractors registered in Classes 1, 2 and 3 were 266, 310 and 461 respectively (260 contractors registered in both Classes 1 and 2).

Improving the FSI contractor registration scheme

5.4 Both the Fire Service (Installations and Equipment) Regulations and Fire Service (Installation Contractors) Regulations were enacted in 1971. From time to time, new FSIs are introduced into the market and higher technical competence is

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Note 35: *The board should consist of: (a) the Director of Fire Services or his representative; (b) a legal advisor appointed by the Director; (c) an FSI contractor nominated by the Director; (d) a public officer nominated by the Building Authority; (e) a public officer nominated by the Water Authority; and (f) a member of the committee of the Fire Insurance Association of Hong Kong nominated by that Association.*

required for handling more sophisticated systems. Pursuant to the Chief Executive's Policy Address 2000, the FSD set up a working group (Note 36) in December 2000 to conduct a review of the FSI contractor registration scheme. The objective was to enhance the professionalism, monitoring and control of FSI contractors to keep pace with the developments of the industry.

5.5 In April 2003, the working group completed the review. Its recommendations included the following:

(a) ***Classes of contractors and minimum qualifications for registration.*** Under the existing classification, Class 2 FSI contractors may handle all FSIs other than those specified in Classes 1 and 3. The trade considered that Class 2 FSI contractors might not possess sufficient knowledge and expertise to handle such a wide range of FSIs. The working group recommended classifying FSI contractors into four classes and raising the minimum qualification requirements for registration to keep pace with the advance in FSI technology;

(b) ***Renewal of registration.*** At present, FSI contractors are not required to renew their registration. To enhance control, the working group recommended requiring FSI contractors to apply for renewal of their registration every three years. The FSD should have the authority to reject an application having regard to, among others, the past performance of the applicant;

(c) ***Disciplinary proceedings.*** Under the existing legislation, only FSI contractors are subject to disciplinary action. To establish a more comprehensive control mechanism, the working group recommended extending the powers of the disciplinary board to cover the qualified persons of FSI contractors and those authorised by them to sign FS251s;

Note 36: *The working group included representatives from five government departments (i.e. the FSD, BD, Architectural Services Department, Electrical and Mechanical Services Department and Housing Department), professional bodies and the trade.*

(d) ***Prosecution.*** According to the Magistrates Ordinance (Cap. 227), the FSD cannot prosecute an FSI contractor for an offence under the Fire Service (Installation Contractors) Regulations or the Fire Service (Installations and Equipment) Regulations more than six months after the commission of the offence. To remedy this shortcoming, the working group recommended introducing provisions in the Regulations to specify that prosecution shall be commenced within six months after the offence becomes known to the FSD; and

(e) ***Handling FS251s.*** To ensure proper receipt of FS251s by the FSD for monitoring the work undertaken by FSI contractors, the working group recommended requiring FSI contractors to have their FS251s endorsed by the FSD before issuing them to FSI owners. In addition, the working group recommended imposing a duty on FSI owners to display the FS251s on annual inspection on a conspicuous location of the FSI.

5.6 Implementing the working group's recommendations requires amendments to the Fire Services Ordinance, Fire Service (Installation Contractors) Regulations and Fire Service (Installations and Equipment) Regulations. Table 6 shows the implementation progress.

Table 6

Progress of implementing the working group's recommendations

Date	Event
24 April 2004	The FSD submitted to the Security Bureau, for consideration and policy support, the draft drafting instructions for the proposed legislative amendments to implement the working group's recommendations.
29 May 2007	The Security Bureau asked the FSD whether there had been any new developments since 2004 that should be taken into account when considering the draft drafting instructions.
17 July 2009	The FSD provided the Security Bureau with information about some new developments (Note) required to be addressed by legislative amendments. The FSD indicated that, with the Security Bureau's policy support, it would incorporate the new developments into the draft drafting instructions.
16 December 2009 to 27 June 2011	The FSD held two meetings with the Security Bureau and provided some additional information to facilitate its consideration of the proposed legislative amendments. On 27 June 2011, the FSD submitted to the Security Bureau revisions to the draft drafting instructions incorporating the new developments since 2004. Up to August 2013, there was no further progress.

Source: FSD records

Note: The new developments included the proposed introduction of a registered fire engineer scheme for implementing third party fire safety certification, which would require legislative amendments to empower the registered fire engineers to inspect and test FSIs. The FSD conducted two rounds of consultation on the scheme in 2007-08 and 2011-12. As at 15 August 2013, it was still studying a business impact assessment report prepared by a consultant.

5.7 Audit is concerned about the lack of progress in implementing the working group's recommendations on improving the FSI contractor registration scheme. A more effective FSI contractor registration scheme will facilitate the FSD's work in ensuring the proper provision and maintenance of FSIs in buildings and premises. In Audit's view, the Security Bureau and FSD should strive to improve the FSI contractor registration scheme.

Audit recommendation

5.8 **Audit has *recommended* that the Director of Fire Services should, having regard to new developments (such as the current progress in implementing third party fire safety certification) and in consultation with the Secretary for Security, determine as soon as possible how best to implement the working group's recommendations on improving the FSI contractor registration scheme.**

Response from the Administration

5.9 The Director of Fire Services agrees with the audit recommendation. He has said that the FSD has been revising the draft drafting instructions for the proposed legislative amendments to both the Fire Service (Installation Contractors) Regulations and Fire Service (Installations and Equipment) Regulations regarding the implementation of the working group's recommendations on improving the FSI contractor registration scheme and would discuss with the Security Bureau for follow-up action.

Monitoring FSI contractors

5.10 Regulation 9(1) of the Fire Service (Installations and Equipment) Regulations states that whenever an FSI contractor installs, maintains, repairs or inspects any FSI, he shall within 14 days after completion of the work issue to the person on whose instructions the work was undertaken a certificate and forward a copy thereof to the FSD. Any FSI contractor who:

(a) contravenes the regulation; or

(b) issues or forwards a certificate thereunder, or a copy thereof, which is false or misleading in a material particular,

commits an offence and is liable on conviction to a fine of $50,000.

5.11 The FSD conducts field checks to monitor the performance of FSI contractors. During a field check, an FSD staff inspects the FSIs with the presence of the FSI contractor to assess whether the workmanship is satisfactory and give advice on the proper performance standard. The FSD uses a demerit point system to determine how frequent to conduct a field check on an FSI contractor. For example, an FSI contractor will be given three demerit points if he is rated unsatisfactory in a field check, and one demerit point will be deducted from his accumulated total when he passes a field check. The FSD conducts more field checks on FSI contractors with more demerit points accumulated, so as to monitor their performance more closely. For the year ended 30 June 2013, the FSD conducted a total of 951 field checks, in three of which the FSI contractors were rated as unsatisfactory.

5.12 As mentioned in paragraph 5.2(d), if an FSI contractor has been convicted of an offence or has been guilty of improper conduct or negligence in the installation, maintenance, repair or inspection of any FSI, the FSD may refer the matter to the disciplinary board. The Head of the Licensing and Certification Command is delegated the authority to approve the referral of cases to the disciplinary board for hearing. Between January 2011 and June 2013, the disciplinary board conducted three hearings (in April 2011, February 2012 and May 2013 respectively).

Monitoring timeliness of submission of FS251s

5.13 Audit noted that the FSD had not established procedures to monitor the timeliness of submission of FS251s by FSI contractors. During the year ended 30 June 2013, the FSD received 124,685 FS251s from a total of 556 contractors. While FSI contractors are required by law to submit FS251s within 14 days after work completion, Audit analysis revealed that 35,930 FS251s (29%) were submitted late, involving a total of 470 contractors. Table 7 shows the details.

Table 7

Delays in submission of FS251s
(year ended 30 June 2013)

Period of delay (Note) (Day)	Number of FS251s	
No delay	88,755 (71%)	
10 or less	19,782 (16%)	35,930 (29%)
11 to 30	9,079 (8%)	
31 to 50	2,681 (2%)	
51 to 100	1,533 (1%)	
Over 100	2,855 (2%)	
Total	124,685 (100%)	

Source: Audit analysis of FSD records

Note: FS251s are required to be submitted within 14 days after work completion. However, the FSD has not input into LIFIPS the dates of work completion and submission of FS251s. For the purpose of this analysis, the dates of signing FS251s by the FSI contractors and receipt of FS251s by the FSD available in LIFIPS were used instead.

5.14 Reviewing the FS251s submitted by FSI contractors is an important part of the FSD's monitoring of FSIs. Where defects in any major FSI in a building are reported in an FS251, the responsible fire station is required to conduct a risk assessment within 24 hours to determine what immediate actions are required (see para. 2.16(b)). As such, any delay in submitting an FS251 by an FSI contractor may prevent the FSD from taking timely action to abate fire hazards. In Audit's view, the FSD needs to establish procedures to monitor the timeliness of submission of FS251s by FSI contractors and take appropriate actions to ensure that they always comply with the statutory requirements (e.g. issuing warning letters to and instituting prosecution actions and disciplinary proceedings against non-compliant contractors). The proposed legislative amendment of requiring FSI

contractors to have their FS251s endorsed by the FSD before issuing them to FSI owners (see paras. 5.5(e) and 5.6), if materialise, will facilitate the FSD's work in this regard.

Ensuring timely conduct of disciplinary board hearings

5.15 According to the FSD's guidelines:

(a) disciplinary board hearings should be held as soon as possible. Any unreasonable delay in conducting a hearing may be taken as a ground for being unfair to the FSI contractor concerned; and

(b) the Licensing and Certification Command has a bring-up system for cases approved for disciplinary board hearing such that cases may be regularly referred to the disciplinary board in a lot provided that the time lapse should not be more than six months.

5.16 Audit selected the disciplinary board hearing in May 2013 (see para. 5.12) to examine whether the guidelines were complied with. Audit found that, contrary to the guidelines, the time lapse between the date of approval for hearing and the date of hearing for all the nine cases heard was more than six months (ranged from 16 to 50 months, averaging 32 months). In Audit's view, the FSD needs to remind its staff to comply with the guidelines on conducting disciplinary board hearings in a timely manner.

Audit recommendations

5.17 **Audit has *recommended* that the Director of Fire Services should:**

(a) **establish procedures to monitor the timeliness of submission of FS251s by FSI contractors;**

(b) **take appropriate actions to ensure that FSI contractors always submit FS251s within 14 days after work completion in compliance with the Fire Service (Installations and Equipment) Regulations; and**

(c) **remind FSD staff to comply with the guidelines on conducting disciplinary board hearings in a timely manner.**

Response from the Administration

5.18 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the FSD will write to FSI contractors to remind them of the importance and requirement of submitting FS251s on time as an interim measure and explore measures to monitor the timeliness of submission by making use of LIFIPS;

(b) the FSD will also consider amending the relevant legislation and enhance LIFIPS (where needed) to allow direct electronic submission of FS251s by FSI contractors, which is not permitted under the current legislation. The electronic submission will facilitate submission of FS251s by FSI contractors and the FSD's monitoring of submission situation; and

(c) an internal guideline has been revised and issued to all concerned officers to ensure the timely conduct of disciplinary board hearings.

PART 6: HANDLING COMPLAINTS ABOUT FIRE SAFETY

6.1 This PART examines the following issues relating to the handling of complaints about fire safety:

(a) investigating complaints (paras. 6.4 to 6.7);

(b) managing outstanding complaint cases (paras. 6.8 to 6.12); and

(c) reporting performance on handling complaints (paras. 6.13 to 6.17).

6.2 Complaints about fire safety, usually received through letter, telephone or e-mail, include those about fire hazards (e.g. FSIs not in efficient working order and defects in ventilating systems) and those about dangerous goods (e.g. storing dangerous goods in excess of exempt quantity without a licence). Different divisions of the Fire Safety Command or the Licensing and Certification Command are responsible for investigating different types of complaints (Note 37). If a complaint is substantiated, the FSD will take appropriate follow-up action (e.g. issuing a warning letter or FHAN).

6.3 Since April 2012, the FSD has used LIFIPS to support the handling of complaints. During April 2012 to June 2013, the divisions of the Fire Safety Command or the Licensing and Certification Command received a total of 8,773 complaints, comprising 1,601 complaints about dangerous goods or fire hazards posing imminent danger and 7,172 other complaints.

Note 37: *Two types of complaints about fire hazards (i.e. obstruction of means of escape and locking of means of escape) are handled by fire stations under the FSD's three operational Commands. Such work, falling under the Fire Service Programme (see para. 1.2), was not covered in this audit review.*

Investigating complaints

6.4 Audit examined 60 complaint cases handled in 2012 to see whether FSD staff had investigated complaints promptly in accordance with the FSD's performance pledges and guidelines. Table 8 shows the results.

Table 8

Audit examination results of 60 complaint cases handled in 2012

Target complaint response time	Number of cases checked	Result
Complaints about dangerous goods or fire hazards posing imminent danger		
(a) Complaints investigated within 24 hours	15	Target was met in all 15 cases (100%).
(b) Complainants advised of the outcome within 12 working days		Target was met in 13 cases (87%). In 1 case, there was no documentary evidence that the complainant had been advised. In the remaining case, the complainant was advised after 13 working days.
Other complaints		
(c) Complaints investigated within 10 working days	45	Target was met in 39 cases (87%). In the other 6 cases, investigations were conducted after 13 to 89 working days. There were no documented reasons or approvals for the delays.
(d) Complainants advised of the outcome within 27 working days		Target was met in 30 cases (67%). In 13 other cases, there was no documentary evidence that the complainants had been advised. In the remaining 2 cases, the complainants were advised after 38 and 174 working days.
Total	60	

Source: Audit analysis of FSD records

6.5 As shown in items (b) to (d) of Table 8, there were cases of delay in investigating the complaints and advising complainants of the investigation outcome. In Audit's view, the FSD needs to ensure that its staff always handle complaints in accordance with its guidelines.

Audit recommendations

6.6 **Audit has *recommended* that the Director of Fire Services should:**

(a) **remind FSD staff of the need to investigate complaints promptly; and**

(b) **tighten controls to ensure that FSD staff comply with the complaint investigation requirements laid down in the FSD's guidelines.**

Response from the Administration

6.7 The Director of Fire Services agrees with the audit recommendations. He has said that FSD staff have been reminded of the need to investigate complaints promptly and actions will be taken to facilitate and ensure their compliance with the complaint investigation requirements.

Managing outstanding complaint cases

6.8 As at 15 July 2013, the divisions of the Fire Safety Command or the Licensing and Certification Command had a total of 1,525 outstanding complaint cases. Table 9 shows an ageing analysis of these cases.

Table 9

Ageing analysis of outstanding complaint cases
(15 July 2013)

Time elapsed since receipt of complaint (Day)	Number of cases
30 or less	167 (11%)
31 to 90	457 (30%)
91 to 180	322 (21%)
181 to 360	422 (28%)
Over 360	157 (10%)
Total	1,525 (100%)

Source: Audit analysis of FSD records

6.9 As shown in Table 9, 157 complaint cases had been outstanding for over 360 days. Audit examined 20 (Note 38) of these 157 cases to see why they had been long outstanding. The audit findings are as follows:

(a) ***Delays in following up warning letters or FHAN.*** In five cases, the complaints had been substantiated, and warning letters or a FHAN issued. There were delays in follow-up actions, as follows:

(i) in three cases, the supervisors instructed the case officers to conduct follow-up inspections by specified dates. However, up to 15 July 2013 (215 to 382 days after the specified dates), the case officers had not done so; and

Note 38: *The FSD had classified the 20 cases as complaints about fire hazards not posing imminent danger.*

(ii) in the other two cases, the case officers had conducted two and five follow-up inspections respectively after issuing the warning letters, noting that the FSI owners had not taken the required actions. The supervisors instructed the case officers to conduct follow-up inspections again by specified dates. However, up to 15 July 2013 (217 and 122 days respectively after the specified dates), the case officers had not done so;

(b) ***Delays in completing investigations.*** In eight cases, previous inspections conducted by case officers had been unable to determine whether the complaints were substantiated (e.g. could not gain access to the premises concerned). The supervisors instructed the case officers to conduct inspections again by specified dates. Up to 15 July 2013, the case officers had not done so (45 to 370 days after the specified dates) for six of the eight cases; and

(c) ***Instructions not given by supervisors.*** In seven cases, after conducting investigations the case officers had made different proposals (e.g. closing the case or conducting inspection again by a specified date). After reviewing the case files, the supervisors had not given any instruction. Up to 15 July 2013 (223 to 425 days after the investigations), no further actions had been taken.

6.10 The audit findings suggest that supervisors need to improve their monitoring and control of outstanding complaint cases, including giving clear instructions to case officers and ensuring that they follow such instructions. Supervisors currently are not provided with regular reports on the details of outstanding complaint cases. In Audit's view, they need such reports to facilitate their monitoring and control work.

Audit recommendations

6.11 **Audit has *recommended* that the Director of Fire Services should:**

(a) **remind supervisors of the need to give clear instructions to case officers for handling complaint cases and ensure that they follow such instructions;**

(b) **remind case officers of the need to handle complaint cases in accordance with instructions given by their supervisors;**

(c) **provide supervisors with regular reports on the details of outstanding complaint cases to facilitate their monitoring and control work; and**

(d) **deal with the outstanding complaint cases as soon as possible, particularly those outstanding for a long period.**

Response from the Administration

6.12 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the FSD has reminded supervisors and case officers of the complaint handling requirements;

(b) the FSD will study the feasibility of introducing additional functions in LIFIPS with a view to providing periodic reports automatically to facilitate the monitoring and control work of the supervisors; and

(c) the FSD will follow up the outstanding complaint cases and take appropriate follow-up actions as soon as possible.

Reporting performance on handling complaints

6.13 In the 2013-14 Controlling Officer's Report, under the Fire Protection and Prevention Programme, the FSD has set three performance targets in respect of handling complaints about fire safety. Table 10 shows the details.

Table 10

Performance targets in respect of handling complaints about fire safety

Target complaint response time	Target percentage	2011 Actual	2012 Actual	2013 Plan
Complaints about dangerous goods or reports of fire hazards posing imminent danger investigated within 24 hours	100%	100%	100%	100%
Complaints about fire hazards not posing imminent danger investigated within 10 working days	100%	100%	100%	100%
Complainants advised within 27 working days of outcome of investigation	100%	100%	100%	100%

Source: FSD's 2013-14 Controlling Officer's Report

Ensuring accuracy of performance information

6.14 The Financial Services and the Treasury Bureau's guidelines require Controlling Officers to make sure that performance information in the Controlling Officer's Reports is substantiated and accurate. Table 10 shows that the target response times were achieved in all complaint cases in 2011 and 2012. However, Audit sample check of complaint cases handled in 2012 revealed that there were non-compliance cases (see Table 8 in para. 6.4). According to the FSD, it adopted a passive reporting mechanism whereby complaint handling divisions were required to report any incidence of non-compliance with the target response times. Since no such report was received, the target response times were considered as fully achieved. In Audit's view, the FSD needs to establish proper controls over the compilation of performance information on complaint handling.

Audit recommendation

6.15 **Audit has *recommended* that the Director of Fire Services should establish control procedures to ensure that performance information on complaint handling set out in the Controlling Officer's Report is substantiated and accurate.**

Response from the Administration

6.16 The Director of Fire Services agrees with the audit recommendation. He has said that the FSD will establish procedures to ensure accuracy of complaint handling performance information.

6.17 The Secretary for Financial Services and the Treasury has said that he will keep in view the FSD's follow-up to the audit recommendation on performance information on complaint handling set out in the FSD's Controlling Officer's Report in the future.

PART 7: PUBLICITY AND EDUCATION ON FIRE SAFETY

7.1 This PART examines the FSD's publicity and education programmes on fire safety, focusing on the following:

(a) Fire Prevention Campaign (paras. 7.3 to 7.7);

(b) Building Fire Safety Envoy Scheme (paras. 7.8 to 7.16); and

(c) announcements in the public interest (APIs) on fire prevention (paras. 7.17 to 7.21).

7.2 The Support Division of the Fire Safety Command is responsible for conducting publicity and education programmes on fire safety. Its work includes organising the annual Fire Prevention Campaign to educate the general public on fire safety, administering a Building Fire Safety Envoy Scheme to enhance public awareness of building fire safety, administering a Fire Safety Ambassador Scheme (Note 39), liaising with the Information Services Department for producing APIs on fire prevention, and producing television and radio programmes and various leaflets, posters, pamphlets and exhibits on fire safety.

Fire Prevention Campaign

7.3 During 2008 to 2012, except for 2010 (Note 40), the FSD organised a Fire Prevention Campaign annually as a major publicity event in promoting fire safety. The Campaign mainly included the production and broadcasting of an one-hour television programme to educate the general public on fire safety. The programme contents included a launching ceremony, speeches and artists'

Note 39: *The Fire Safety Ambassador Scheme was implemented in 1998. It trains volunteers from various sectors of the community for disseminating fire protection messages and promoting fire safety awareness. As at July 2013, about 132,000 Ambassadors had been appointed.*

Note 40: *In 2010, instead of organising a Fire Prevention Campaign, the FSD produced a television series.*

performances. The Campaign for each year focused on disseminating specific fire prevention messages. For example, the 2012 Campaign was aimed at educating the public on preventing fire both at home and at countryside. The cost of producing the 2012 television programme was $1.4 million.

7.4 After completing the Campaign in each year, the FSD conducted a review of its effectiveness, mainly focusing on the number of viewers of the programme. As the viewing rates indicated that there were some one million viewers for each of the past four Campaigns, the FSD concluded that they were proven to be successful and cost-effective.

7.5 Audit noted that the FSD's review had not covered the audience's awareness levels of the fire safety messages disseminated by the Campaign in each year. The Good Practice Guide on Publicity Campaigns issued by the Information Services Department has laid down the following guidelines:

(a) if funding allows, a market research company can be commissioned to conduct a survey to review the effectiveness of a publicity campaign;

(b) in carrying out a survey, it is necessary to select relevant performance indicators to evaluate effectiveness. Common indicators are awareness levels of campaign messages and changes in public attitude or behaviour; and

(c) where necessary, comparison can be drawn by polls conducted before and after the campaign.

In Audit's view, since the FSD has organised the annual Fire Prevention Campaign in the same form for four years, it may be opportune to conduct the above-mentioned survey to review its effectiveness.

Audit recommendation

7.6 **Audit has *recommended* that the Director of Fire Services should consider the need to review the effectiveness of the annual Fire Prevention Campaign by commissioning a market research company to conduct a survey.**

Response from the Administration

7.7 The Director of Fire Services agrees with the audit recommendation.

Building Fire Safety Envoy Scheme

7.8 The Building Fire Safety Envoy Scheme, launched in August 2008, aims at enhancing the fire safety management of buildings by recruiting the owners, occupants and property management staff as Envoys to look after the fire safety matters of their buildings. A 1.5-day training course is provided to all Envoys so as to strengthen their fire safety knowledge. The main duties of the Envoys include:

(a) disseminating fire safety messages to occupants of their buildings;

(b) reporting fire hazards or irregularities;

(c) ensuring the effectiveness and proper maintenance of the FSIs in their buildings; and

(d) assisting in organising fire drills and fire safety activities for the residents.

As at 31 July 2013, the FSD had appointed a total of 3,375 Envoys for 1,847 buildings.

7.9 Since October 2011, the FSD has implemented an award scheme to provide an incentive to encourage Envoys' active participation in building fire safety matters. Envoys will be awarded merit points for their reported contributions (e.g. 50 points for ensuring the annual inspections of the FSIs in their buildings). Those obtaining 350, 250 and 150 points will be given Gold, Silver and Bronze Awards respectively.

Encouraging Envoys' active participation in building fire safety matters

7.10 During October 2012 to July 2013, only 95 (3%) of the 3,375 Envoys reported that they had made contributions (totalling 230) to building fire safety (Note 41). Table 11 shows the details.

Table 11

Envoys' contributions to building fire safety
(October 2012 to July 2013)

Contribution	Number
Ensuring annual inspections of FSIs	87
Assisting in organising fire safety activities	67
Abating fire hazards	63
Reporting fire hazards	3
Others (e.g. contributing a newsletter article)	10
Total	230

Source: *FSD records*

Remarks: *70 Envoys reported more than one contribution.*

7.11 Table 11 shows that 87 Envoys reported that they had ensured the annual inspections of FSIs in their buildings, discharging one of their main duties (see para. 7.8(c)). Audit examination of 20 other buildings with Envoys appointed revealed that no FS251 was submitted for four buildings to show that their FSIs had been inspected annually. However, the Envoys concerned had not reported any irregularities, suggesting that they might not have conducted any check in this

Note 41: *The FSD compiles these statistics for the purpose of awarding merit points only. After completion of the merit point awarding exercise for the year October 2011 to September 2012, the FSD has not kept the related statistics.*

regard. In Audit's view, the FSD needs to take appropriate measures to encourage Envoys to participate actively in building fire safety matters, particularly in respect of the annual inspections of FSIs as the FSD had found many buildings not complying with the requirement (see para. 2.10).

Recruiting Envoys for old buildings

7.12 In 2008, the FSD announced a four-pronged approach (publicity, enforcement, checking and partnership) to tackle fire hazards in old buildings. For each selected building, the FSD will conduct fire safety publicity before taking enforcement action against fire hazards. After all fire hazards have been cleared, the local fire station will conduct periodic checks, and owners, occupiers or management staff will be invited to serve as Envoys of the building. To take forward this new initiative, the FSD conducted a scouting survey of pre-1987 composite buildings and adopted a risk-based approach in the selection of buildings. The FSD estimated that about 2,300 pre-1987 composite buildings would require proactive and intensive enforcement. Up to 31 July 2013, 230 buildings had been selected for implementing the four-pronged approach and Envoys had been appointed for 173 of the 230 buildings.

7.13 Apart from the buildings selected for implementing the four-pronged approach, the FSD has not adopted a risk-based approach in selecting buildings for recruiting Envoys for them. From time to time, organisations interested in joining the Building Fire Safety Envoy Scheme (e.g. property management companies and Owners' Corporations) approach the FSD to arrange training for their nominees. There are also referrals from existing Envoys.

7.14 According to the Home Affairs Department, there were some 3,900 buildings in Hong Kong without Owners' Corporations, residents' organisations or property management companies, and they were 30 years old or above. In Audit's view, following the risk-based approach, the FSD needs to give priority to recruiting Envoys for such buildings so as to enhance their fire safety.

Audit recommendations

7.15 **Audit has *recommended* that the Director of Fire Services should:**

(a) **take appropriate measures to encourage Building Fire Safety Envoys to participate actively in the fire safety matters of their buildings, particularly in respect of the annual inspections of FSIs; and**

(b) **following the risk-based approach, give priority to recruiting Envoys for old buildings without Owners' Corporations, residents' organisations or property management companies.**

Response from the Administration

7.16 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the Building Fire Safety Envoy Scheme is a voluntary services programme. The Scheme should not be considered as ineffective because among the 20 sample buildings examined by Audit, FSIs in 16 buildings had been properly maintained. Nevertheless, the FSD will take appropriate measures to encourage more active participation of Envoys in fire safety matters of their buildings; and

(b) the FSD will adopt a risk-based approach to recruit Envoys for old composite and domestic buildings without Owners' Corporations, residents' organisations or property management companies, with a view to enhancing their fire safety.

Announcements in the public interest on fire prevention

7.17 Broadcasting APIs on television is an important means for the FSD to disseminate fire safety messages. In the past five years, 14 APIs on fire prevention were broadcast on television, including four APIs on the proper maintenance of FSIs. The broadcasting of two of the four APIs were ceased in February 2011 and January 2012 respectively while the broadcasting of the other two APIs is ongoing.

Audit noted issues concerning the APIs which require the FSD's attention. Details are in paragraphs 7.18 and 7.19.

7.18 ***Statutory requirement not mentioned.*** In the April 2013 matching exercise, the FSD found that 44% of the buildings were not in compliance with the statutory requirement to conduct annual inspections of FSIs (see para. 2.10). In addition, the FSD received about 6,300 public enquiries about the requirement after issuing advisory letters to the building owners, occupiers or management offices concerned. These suggest a need to enhance public awareness in this regard. However, the two ongoing APIs had no mention of the requirement (Note 42).

7.19 ***Broadcasting spots not increased.*** The Information Services Department allocates broadcasting spots to individual APIs taking into account the requests of the bureaux/departments concerned. Audit noted that the FSD had not requested more broadcasting spots for the APIs during the period in which the advisory letters were issued. In Audit's view, the importance of conducting annul inspections of FSIs as mentioned in the letters could have been better understood by the recipients if the FSD had done so.

Audit recommendations

7.20 **Audit has *recommended* that the Director of Fire Services should:**

(a) **enhance public awareness of the statutory requirement to conduct annual inspections of FSIs by publicising the requirement in future APIs on fire prevention as appropriate; and**

(b) **request more broadcasting spots for an API to enhance publicity when conducting any large scale operation on related matters.**

Note 42: *The requirement was mentioned in the API which has ceased to be broadcast since January 2012 (see para. 7.17).*

Response from the Administration

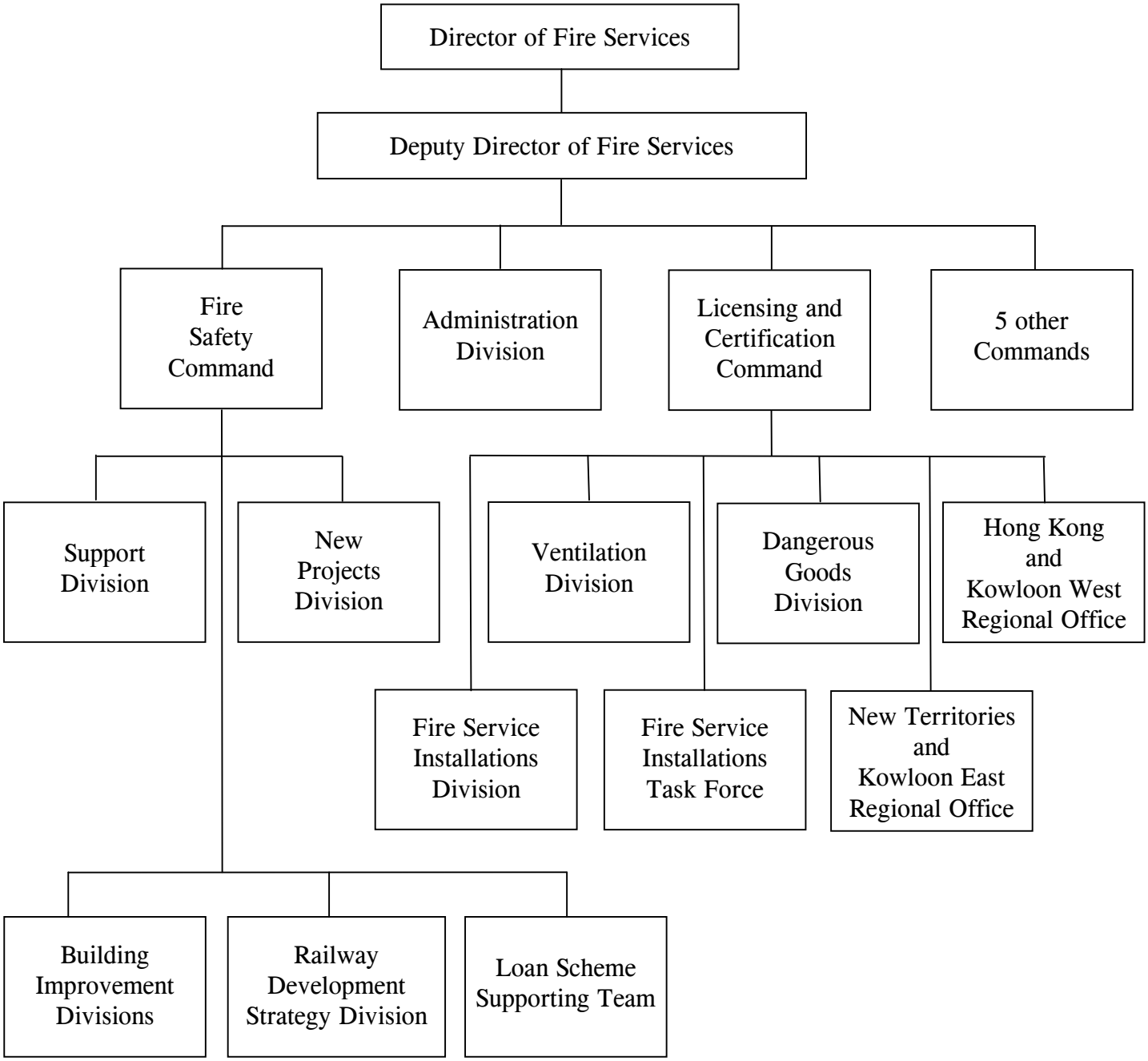
7.21 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) APIs regarding annual maintenance of FSIs and ventilating systems were produced and delivered in the past. The FSD will include the statutory requirement to conduct annual inspections of FSIs on APIs as appropriate in future to enhance public awareness of the requirement; and

(b) the FSD will request the Information Services Department to increase the broadcast spots/frequency of the relevant APIs in future as appropriate.

Appendix A
(para. 1.4 refers)

Fire Services Department
Organisation chart (extract)
(30 September 2013)



Source: FSD records

Acronyms and abbreviations

APIs	Announcements in the public interest
Audit	Audit Commission
BD	Buildings Department
FEHD	Food and Environmental Hygiene Department
FHAN	Fire Hazard Abatement Notice
FSD	Fire Services Department
FSIs	Fire service installations and equipment
FS251	Certificate of Fire Service Installations and Equipment
LIFIPS	Integrated Licensing, Fire Safety and Prosecution System

CHAPTER 7

Buildings Department
Fire Services Department

Government's efforts to enhance fire safety of old buildings

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

GOVERNMENT'S EFFORTS TO ENHANCE FIRE SAFETY OF OLD BUILDINGS

Contents

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GOVERNMENT'S EFFORTS TO ENHANCE FIRE SAFETY OF OLD BUILDINGS

Executive Summary

1. The fire safety provisions in old buildings, though meeting the safety standards at the time of construction, may not be sufficient under the present-day standards. For better protection of lives and properties, the Fire Safety (Commercial Premises) Ordinance (Cap. 502 — FS(CP)O) and the Fire Safety (Buildings) Ordinance (Cap. 572 — FS(B)O) came into operation in 1997 and 2007 respectively and empowered the Buildings Department (BD) and Fire Services Department (FSD) to issue directions requiring the upgrading of fire safety provisions in certain premises and old buildings. The Fire Safety Section of the BD and the two Building Improvement Divisions of the FSD are responsible for enforcing the FS(CP)O and FS(B)O. As at 30 September 2013, they had an establishment of 129 staff and 177 staff respectively. For 2012-13, the total expenditure amounted to $158 million. The Audit Commission (Audit) has recently conducted a review to examine the implementation of fire safety improvement programmes under the FS(CP)O and FS(B)O (paras. 1.2, 1.3, 1.6, 1.8 and 1.11).

Implementation of fire safety improvement programmes

2. ***Progress in implementing the improvement programmes.*** The Government has adopted a phased approach in implementing the fire safety improvement programmes. As at 30 June 2013, the BD and FSD had inspected 75% of the 3,035 Prescribed Commercial Premises (see Appendix A) and 88% of the 1,783 Specified Commercial Buildings (see Appendix B) under the scope of the FS(CP)O, and 72% of the 9,000 Target Composite Buildings (see Appendix C) under the scope of the FS(B)O. As regards directions issued for Prescribed Commercial Premises and Specified Commercial Buildings, the compliance rates were 58% and 74% respectively for those issued by the BD, and 88% and 90% respectively for those issued by the FSD. However, the compliance rates for Target Composite Buildings were only 16% and 27% for directions issued by the BD and FSD respectively, which are a cause for concern (paras. 2.2, 2.12, 2.13, 2.15 and 2.16).

3. ***Facilitation measures.*** Experience in implementing the improvement programmes has shown that the existence of Owners' Corporations (OCs) could help coordinate the statutorily required works in the common parts of buildings. However, the Home Affairs Department (HAD)'s assistance was only sought for buildings without OCs after inspections. Consideration can be given to sharing the inspection plans with the HAD as early as practicable so that the HAD can better plan its liaison work for buildings without OCs. For the various financial assistance schemes and technical support that have been put in place to facilitate owners in complying with directions, there is merit to conduct a survey to find out whether these measures are meeting their needs (paras. 2.5, 2.20 and 2.22).

Arrangements for inspections and issuing fire safety directions

4. ***Inspection arrangements.*** Audit has found that: (a) certain chain shops selling furniture and household items were included in the Prescribed Commercial Premises inspection list drawn up by the FSD, but some other chain shops selling similar products were not; (b) some pre-war buildings had difficulties to comply with fire safety directions due to site constraints. To address the issue, the BD and FSD have commenced a pilot study which is targeted for completion in 2014. Given that 270 (54% of 502) pre-war buildings have not been inspected, there is a need to expedite actions; and (c) according to the FS(CP)O, a commercial building used exclusively as a utilities building would not be regarded as a Specified Commercial Building. While the BD decided in 2011 that the FS(CP)O should apply to some utilities buildings which had been partly used as offices, follow-up action had not yet been taken (paras. 3.6 and 3.8 to 3.10).

5. ***Arrangements for issuing directions.*** The BD and FSD have laid down guidelines that directions should be issued within four months after inspections. Audit has found that as at 30 June 2013 the four-month time target was not met for more than half of the directions issued. For 160 buildings/premises, the directions were issued three or more years after the lapse of the respective four-month periods. As regards directions yet to be issued, 91% for Prescribed Commercial Premises, 92% for Specified Commercial Buildings and 85% for Target Composite Buildings were overdue (averaging 36 months, 40 months and 18 months respectively). A long delay in issuing directions is unsatisfactory as the implementation of the fire safety improvement programmes would be prolonged. It is also possible that the conditions of the target buildings/premises may have changed and thus necessitate

re-inspections. Case studies have revealed a need to improve the timelines in preparing inspection reports and determining the boundary of Prescribed Commercial Premises in accordance with the provisions of the FS(CP)O. There is also a need to review the inspection target to see if it is commensurate with the BD's and FSD's capacity in issuing directions for all inspected buildings within four months after inspection (paras. 3.17, 3.19 to 3.22 and 3.24).

Administration of fire safety directions issued

6. ***Management information for monitoring follow-up actions.*** Generally, the BD and FSD allow owners/occupiers 12 months to comply with the fire safety directions. They have laid down guidelines for their staff on follow-up actions in case of non-compliance. While the BD has maintained a computerised database for monitoring follow-up actions on directions issued, the FSD's computer system did not support case monitoring and statistical analysis of directions issued. The BD's database showed that as at 30 June 2013, 31,450 directions issued by the BD had remained outstanding for an average period of 34 months (paras. 4.2, 4.4 and 4.5).

7. ***Case studies.*** Audit examination of some long outstanding directions has revealed cases of inadequate check on works progress and delay in conducting compliance inspection of completed works. In one case, enforcement action was not taken by the BD against an owner who did not respond to repeated warnings although the direction had been outstanding since December 2001. To demonstrate the Government's commitment to improving the fire safety provisions of the target buildings/premises and to serve as deterrence, stringent enforcement action is warranted on long outstanding directions without reasonable excuses (paras. 4.6 to 4.8 and 4.11).

Follow-up actions on unauthorised building works found during inspections

8. Unauthorised building works (UBWs) that pose threat to fire safety may be found during inspections of target buildings under the FS(CP)O and FS(B)O. The BD has laid down guidelines on follow-up action to be taken on such UBWs. Case studies have revealed that UBWs and suspected sub-divided flats found during inspections of target buildings/premises had not been promptly followed up (paras. 5.5 to 5.7).

Audit recommendations

9. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Administration should:**

Implementation of fire safety improvement programmes

(a) **step up efforts to improve the compliance rates of fire safety directions, especially those for Target Composite Buildings (para. 2.23(b));**

(b) **share inspection plans with the HAD as early as practicable and conduct a survey to find out whether the existing facilitation measures are meeting the owners' need (para. 2.23(c) and (d));**

Arrangements for inspections and issuing fire safety directions

(c) **provide adequate guidance to FSD staff for identifying Prescribed Commercial Premises and expedite actions on pre-war and utilities buildings (paras. 3.11(a) and 3.12);**

(d) **take effective measures to improve the timeliness in issuing directions and to clear the backlog of directions overdue for issuing as soon as possible (para. 3.28(a));**

(e) **review the current annual inspection target for Target Composite Buildings, to see if it is commensurate with the capacity in issuing directions within four months after inspections (para. 3.28(b));**

Administration of fire safety directions issued

(f) **enhance the FSD's computer system for case management and monitoring the timeliness of enforcement actions (para. 3.29(a));**

(g) **tighten controls to ensure that the laid down procedures on checking progress of works and completed works required in fire safety directions are strictly complied with (paras. 4.12(b) and 4.13(a));**

(h) **step up enforcement actions against non-compliant owners/occupiers, instigating prosecution actions on long outstanding cases without reasonable excuses (paras. 4.12(c) and 4.13(c)); and**

Follow-up actions on unauthorised building works found during inspections

(i) **take measures to ensure that UBWs with fire hazards found during inspections are promptly followed up (para. 5.8(a)).**

Response from the Administration

10. The Administration agrees with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 The principal legislation providing for fire safety standards in buildings is the Buildings Ordinance (Cap. 123) and the Fire Services Ordinance (Cap. 95). Owners and occupiers are required to maintain fire safety construction and fire service installations of buildings in accordance with the building plans approved by the authorities and should not carry out unauthorised alterations and addition to the fire safety construction of the buildings. Over time, the fire safety standards have been revised to take account of the advance in fire safety technology and building design. The fire safety provisions in old buildings, though meeting the safety standards at the time of construction, may not be up to the present-day standards. To enhance the fire safety level of old buildings for better protection of lives and properties, the Government introduced legislation in 1997 and 2002, empowering the Buildings Department (BD) and Fire Services Department (FSD) to serve fire safety directions on owners/occupiers, requiring them to provide additional fire safety measures which were not originally included in the approved building plans in certain types of old buildings.

Fire Safety (Commercial Premises) Ordinance

1.3 Following a serious fire in a Shek Kip Mei branch of a bank in 1994, the Government's investigation team recommended that the fire safety standards in banks and similar commercial premises with a relatively high customer density should be improved. In May 1997, the Fire Safety (Commercial Premises) Ordinance (Cap. 502 — FS(CP)O) came into operation requiring owners/occupiers of five types of Prescribed Commercial Premises (see Note 1 and Appendix A for

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Note 1: *Prescribed Commercial Premises refer to commercial premises with a total floor area exceeding 230 m^2 each that are used for carrying out businesses including banks (excluding merchant banks), off-course betting centres, jewelry or goldsmith shops having a security area, supermarkets, hypermarkets or department stores and shopping arcades. The FS(CP)O applies to both existing and new Prescribed Commercial Premises.*

illustration) to improve their fire safety measures which might include any or all of the following:

(a) ***Provision of fire safety construction measures under the enforcement of the BD.*** The detailed requirements are set out in the three Codes of Practice issued by the BD, namely:

(i) the Code of Practice for the Provision of Means of Escape in Case of Fire 1996;

(ii) the Code of Practice for Fire Resisting Construction 1996; and

(iii) the Code of Practice for Means of Access for Firefighting and Rescue 1995.

These requirements include the provision of adequate means of escape from the premises in case of fire, adequate means of access to the building/premises to facilitate firefighting and rescue; and measures to inhibit the spread of fire and to ensure the integrity of the structure of the building/premises; and

(b) ***Provision of fire service installations and equipment under the enforcement of the FSD.*** The detailed requirements are set out in the Code of Practice for Minimum Fire Service Installations and Equipment 1994 issued by the FSD. These requirements include the provision of automatic sprinkler systems, automatic cut-off devices for mechanical ventilating systems (e.g. air condition systems), manual fire alarms, emergency lighting and portable fire extinguishers.

1.4 In 1998, the FS(CP)O was amended to extend the enforcement of the above fire safety improvement requirements to Specified Commercial Buildings. The FS(CP)O defines a Specified Commercial Building (see Appendix B for illustration) as the whole of a non-domestic building which was:

(a) constructed to be used or is being used for the purposes of an office, business, trade or entertainment; and

(b) constructed or with building plans first submitted to the Building Authority for approval on or before 1 March 1987 (Note 2).

Fire Safety (Buildings) Ordinance

1.5 According to surveys conducted by the BD and FSD in 1998, the fire safety provisions of many old private buildings were not up to the modern standards, particularly those of the composite (partly commercial and partly domestic) buildings. In 2002, the Fire Safety (Buildings) Ordinance (Cap. 572 — FS(B)O) was enacted to improve the fire safety measures of pre-1987 (see para. 1.4(b)) composite buildings (known as Target Composite Buildings — see Appendix C for illustration) in the first instance. This is to be followed by pre-1987 domestic buildings with more than three storeys (known as Target Domestic Buildings).

1.6 The fire safety improvement requirements for the non-domestic parts of the Target Composite Buildings are modelled on those stipulated in the FS(CP)O. For the domestic parts of the Target Composite Buildings and for the Target Domestic Buildings, taking into account their lower fire load and fire risk, only the most essential fire safety improvement items are required (e.g. the provision of fire hydrant/hose reel systems and replacement of those doors nearest to the staircase with doors of the required standard). The FS(B)O came into operation in July 2007 after the Administration had addressed the Legislative Council Members' concern about the ways to facilitate compliance by all owners in multi-storey buildings with the relevant statutory requirements.

1.7 As at 30 June 2013, there were:

(a) 3,035 Prescribed Commercial Premises;

(b) 1,783 Specified Commercial Buildings;

Note 2: *The Code of Practice for Minimum Fire Service Installations and Equipment was substantially revised in March 1987. Buildings with their building plans first submitted to the Building Authority for approval on or before 1 March 1987 are likely to fall short of the fire safety standards laid down in the 1987 Code of Practice.*

(c) about 9,000 Target Composite Buildings; and

(d) about 3,000 Target Domestic Buildings.

The Government has adopted a phased approach in implementing fire safety improvement programmes under the FS(CP)O and FS(B)O, depending on the age and the assessed level of risk of the buildings/premises.

1.8 The Fire Safety Section of the BD and the two Building Improvement Divisions of the FSD are responsible for enforcing the FS(CP)O and FS(B)O (see organisation charts at Appendices D and E respectively). As at 30 September 2013, they had an establishment of 129 and 177 staff respectively. For 2012-13, the total expenditure amounted to $158 million.

Unauthorised building works found during inspections of target buildings

1.9 Building works carried out in contravention of the Buildings Ordinance are deemed as unauthorised building works (UBWs) and are subject to enforcement actions by two Existing Buildings Divisions of the BD (Note 3). Some of these UBWs may pose threat to the fire safety of a building. The BD has laid down guidelines on the follow-up actions that should be taken to tackle such UBWs found during inspections under the FS(CP)O and FS(B)O.

Audit reviews

1.10 In 2004 (at which time the FS(B)O had not yet been implemented), the Audit Commission (Audit) conducted an audit review on "Upgrading of fire safety standards in old buildings". The results were reported in Chapter 11 of the Director of Audit's Report No. 43 of October 2004.

Note 3: *Apart from tackling UBWs, the two Existing Buildings Divisions (collectively referred to as the Existing Buildings Division hereinafter) are also responsible for implementing the building safety and maintenance enforcement programme on existing buildings. As at 30 September 2013, the Existing Buildings Division had a total establishment of 419 staff. A breakdown of the staff number into those tackling UBWs is not available.*

1.11 Audit has recently conducted another review to examine new developments in implementing fire safety improvement programmes under the FS(CP)O and FS(B)O. The review has focused on the following areas:

(a) implementation of fire safety improvement programmes (PART 2);

(b) arrangements for inspections and issuing fire safety directions (PART 3);

(c) administration of fire safety directions issued (PART 4); and

(d) follow-up actions on unauthorised building works found during inspections (PART 5).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

1.12 Audit has conducted a separate review on the FSD's fire protection and prevention work other than the implementation of the FS(CP)O and FS(B)O. The results are reported in Chapter 6 of the Director of Audit's Report No. 61.

General response from the Administration

1.13 The Director of Buildings and the Director of Fire Services agree with the audit recommendations. The Director of Buildings has said that:

(a) the BD welcomes the audit review;

(b) the target buildings of the FS(CP)O and FS(B)O had complied with the fire safety requirements in force at the time of construction. Against this background and taking into account the practical difficulties for some building owners to carry out the required fire safety improvement works due to various constraints, the BD (as committed during the passage of the concerned bills) has always been (without compromising fire safety) adopting a flexible and pragmatic approach in enforcing the FS(CP)O and FS(B)O. In this context, the Audit Report provides some useful recommendations; and

(c) the BD will in collaboration with the FSD, conduct an overall review on the implementation strategy of the FS(CP)O and FS(B)O taking into account the recommendations, various previous commitments to the Legislative Council and resource implications in a bid to further enhance the Government's efforts in this respect.

1.14 The Secretary for Security has said that:

(a) he welcomes the audit recommendations to improve the Government's efforts to enhance the fire safety of old buildings;

(b) the BD and FSD will work together with relevant parties to follow up on the recommendations as appropriate; and

(c) the Security Bureau will closely monitor the progress of those follow-up actions and ensure that the recommendations are implemented as far as possible in a timely manner.

1.15 The Secretary for Development has said that:

(a) he welcomes the audit review, which provides useful recommendations on making further improvement in enhancing the fire safety of old buildings; and

(b) the BD will follow up the recommendations as appropriate and the Development Bureau will closely monitor the follow-up actions and ensure that they are carried out in a timely manner as far as possible.

Acknowledgement

1.16 Audit would like to acknowledge with gratitude the full cooperation of the staff of the BD and FSD during the course of the audit review.

PART 2: IMPLEMENTATION OF FIRE SAFETY IMPROVEMENT PROGRAMMES

2.1 This PART examines the implementation of fire safety improvement programmes under the FS(CP)O and FS(B)O.

Facilitation measures

Phased implementation

2.2 The Government has adopted a phased approach in implementing fire safety improvement programmes under the FS(CP)O and FS(B)O, depending on the age and the assessed level of risk of the buildings/premises (see Table 1).

Table 1

Implementation programmes under FS(CP)O and FS(B)O

Prescribed Commercial Premises	
Phase 1 *(from May 1997)*	Prescribed Commercial Premises in buildings without sprinkler system (mostly built before 1973)
Phase 2 *(from January 2001)*	Prescribed Commercial Premises in buildings with occupation permits issued before 1980
Phase 3 *(from March 2005)*	Prescribed Commercial Premises in buildings with occupation permits issued between 1980 and 1990
Phase 4 *(from September 2009)*	Prescribed Commercial Premises in buildings with occupation permits issued after 1990
Specified Commercial Buildings	
Phase 1 *(from June 1998)*	Specified Commercial Buildings constructed or with building plans first submitted before March 1973
Phase 2 *(from October 2001)*	Specified Commercial Buildings constructed or with building plans first submitted between March 1973 and March 1987
Target Composite Buildings and Target Domestic Buildings	
Phase 1 *(from July 2007)*	Target Composite Buildings constructed or with building plans first submitted before March 1987
Phase 2 *(Tentatively from January 2016)*	Target Domestic Buildings constructed or with building plans first submitted before March 1987

Source: BD and FSD records

Flexible and pragmatic approach

2.3 There may be practical difficulties for some building owners to comply with some of the fire safety requirements due to the physical constraints and/or structural problems of the buildings/premises. Without compromising fire safety, the BD and FSD have adopted a flexible and pragmatic approach in handling these cases. Some examples are:

(a) ***Extension of time.*** Under the FS(CP)O and FS(B)O, the BD and FSD are empowered to serve fire safety directions on owners/occupiers, directing them to improve the fire safety measures of their buildings/premises within a specified period (usually 12 months). The compliance period could be extended upon application by owners/occupiers if they have genuine difficulties; and

(b) ***Relaxation or exemption of some requirements.*** The BD and FSD will exercise flexibility in granting relaxations or even exemptions of some requirements having regard to the particular circumstances of each case. For instance, if an authorised person or a registered structural engineer certifies that the rooftop of the building cannot support a standard fire service water tank of a hose reel system due to structural problems, the FSD will consider accepting a water tank of smaller capacity. In an exceptional situation where installation of a water tank is not practicable, the FSD will even consider waiving the installation of the entire hose reel system and have it replaced by the provision of fire extinguishers and manual fire alarm system. As for the fire safety construction, the BD will adopt a flexible and pragmatic approach in granting relaxation or exemption of some requirements on a case-by-case basis if there is site constraint.

Financial and other assistance

2.4 Various financial assistance schemes are in place to help alleviate possible financial problems that some building owners may encounter. These schemes are operated by the BD and non-governmental organisations as follows:

(a) ***Building Safety Loan Scheme administered by the BD.*** The scheme provides owners with loans without any means test and at a no-gain-no-loss interest rate (up to a ceiling of $1 million per unit of accommodation) to carry out the required improvement works (Note 4). Elderly singletons/couples aged 60 or above eligible for grant of interest-free loan may apply to extend the repayment for an unspecified period until the transfer of title of the property or death of the borrower, whichever is the earlier; and

(b) ***Loans and grants provided by other organisations.*** The Hong Kong Housing Society and the Urban Renewal Authority (Note 5) provide both loan and grant schemes for individual owners and Owners' Corporations (OCs) covering improvement works in individual flats and common areas. For example, the Building Maintenance Grant Scheme for Elderly Owners administered by the Hong Kong Housing Society on commission of the Administration, offers a maximum grant of $40,000. Since 2011, the Hong Kong Housing Society and the Urban Renewal Authority have consolidated their respective schemes and jointly rolled out a one-stop Integrated Building Maintenance Assistance Scheme to provide financial assistance and technical support to property owners. Under the Integrated Scheme, owners can complete an application form for making multiple applications for various grants and loans (including the loan scheme administered by the BD).

2.5 Experience in implementing the FS(CP)O shows that the existence of OCs could help coordinate the works in the common parts of the buildings as required under the fire safety directions. To improve building management, the Home Affairs Department (HAD), through its liaison networks in various districts, has been making proactive efforts to encourage, advise and assist owners to form OCs. From 2004 to 2007, in preparation for implementing the FS(B)O, the BD and FSD inspected about 3,200 Target Composite Buildings to explain the improvement

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Note 4: *With a rolling fund of $700 million, the scheme provides loans for carrying out improvement works voluntarily or in compliance with statutory orders (including but not limited to those issued under the FS(CP)O and FS(B)O). Up to 31 March 2013, the total amount of loans made under the scheme was about $615 million (the amount specifically relating to works under the FS(CP)O and FS(B)O was not readily available).*

Note 5: *Both the Hong Kong Housing Society and the Urban Renewal Authority are not audited organisations under the value for money audit guidelines.*

works requirements and provide technical advice. In addition, they identified those Target Composite Buildings without OCs so that the HAD could start early in assisting them to form OCs.

Enforcement mechanism

2.6 Under the FS(CP)O and FS(B)O, the BD will issue fire safety directions to owners whereas the FSD will issue fire safety directions to owners/occupiers. An owner/occupier who, without reasonable excuses, fails to comply with the fire safety directions issued by the BD or FSD is guilty of an offence. Upon conviction, the owner/occupier is liable to a fine. The BD and FSD may also apply to:

(a) the Magistrate for making a compliance order directing the owner/occupier to comply with the requirements specified in the fire safety directions; and

(b) the District Court for making a use restriction order/prohibition order restricting the use or occupation of the premises/buildings concerned.

2.7 The penalty for failure to comply with a fire safety direction and a court order is summarised in Table 2.

Table 2

Penalty under FS(CP)O and FS(B)O

Non-compliance with	Fine	Further fine	Imprisonment
Fire safety direction	$25,000	$2,500/day	–
Compliance order	$50,000	$5,000/day	–
Use restriction order/ prohibition order	$250,000	$25,000/day	3 years

Source: BD and FSD records

2.8 Under the FS(B)O, the BD and FSD are empowered to register in the Land Registry a fire safety compliance order or a prohibition order against a building or such parts of it to which the order relates. Such registration would make the fact of potential liability known to any prospective property buyers who may be interested to do a land search. It would thus help provide an incentive for a building owner to comply with the outstanding order so as to maintain the value of his property.

Progress in implementing the improvement programmes

Reporting of compliance position

2.9 The objectives of the FS(CP)O and FS(B)O are to provide better protection from the risk of fire for occupants and users of, and visitors to the target buildings/premises. For example, the provision of an automatic sprinkler system required in a fire safety direction would help control the spread of fire and a fire alarm system would alert occupants in the event of fire. The extent of compliance with the fire safety directions issued by the BD and FSD is an important indicator of the progress made in improving the fire safety measures of these target buildings/premises.

2.10 In the 2004 audit review, it was found that both the BD and FSD only included as performance indicators in their Controlling Officer's Reports (CORs) the annual numbers of Prescribed Commercial Premises and Specified Commercial Buildings inspected and the annual numbers issued with fire safety directions. There was no performance information on the extent of compliance with the fire safety directions. In response to Audit's recommendations, the BD and FSD took the following improvement measures:

(a) ***Annual compliance figures of directions.*** In the CORs of 2005-06 and onwards, the BD and FSD included as performance indicators the annual numbers of fire safety directions issued for Prescribed Commercial Premises and Specified Commercial Buildings (Note 6), and the numbers

Note 6: *Since 2005-06, the annual numbers of Prescribed Commercial Premises and Specified Commercial Buildings issued with fire safety directions have ceased to be published in the CORs.*

of directions having been complied with (Note 7). Similar annual compliance information for Target Composite Buildings was included in the BD's and FSD's CORs of 2008-09 and onwards; and

(b) ***Cumulative compliance information.*** In the CORs of 2006-07 to 2010-11, the BD and FSD reported the following cumulative figures to show the progress made in improving the fire safety measures of Prescribed Commercial Premises and Specified Commercial Buildings since the implementation of the respective improvement programmes in 1997 and 1998:

(i) the cumulative numbers of directions issued to Prescribed Commercial Premises and Specified Commercial Buildings, and the numbers of which having been complied with; and

(ii) the cumulative numbers of Prescribed Commercial Premises and Specified Commercial Buildings inspected and the numbers of which complying with all directions.

2.11 While both the annual compliance figures and cumulative compliance information are important performance measures, the BD and FSD had ceased to include the cumulative compliance information in their CORs from 2011-12 onwards. As for Target Composite Buildings, no cumulative compliance information had been provided in the CORs of 2008-09 and onwards to show the extent of achievement in upgrading the fire safety provisions of these target buildings since the implementation of the improvement programme in 2007. In Audit's view, there is a need to provide sufficient performance information in the BD's and FSD's CORs (such as the cumulative compliance information) to enable stakeholders to have a better picture of the progress made in implementing the fire safety improvement programmes under the FS(CP)O and FS(B)O.

Note 7: *The numbers of directions having been complied with included those directions discharged for various reasons, such as improvements of equivalent standard, alternative improvement works completed, or cessation of business. The same definition applies throughout this Audit Report.*

Compliance position for Prescribed Commercial Premises

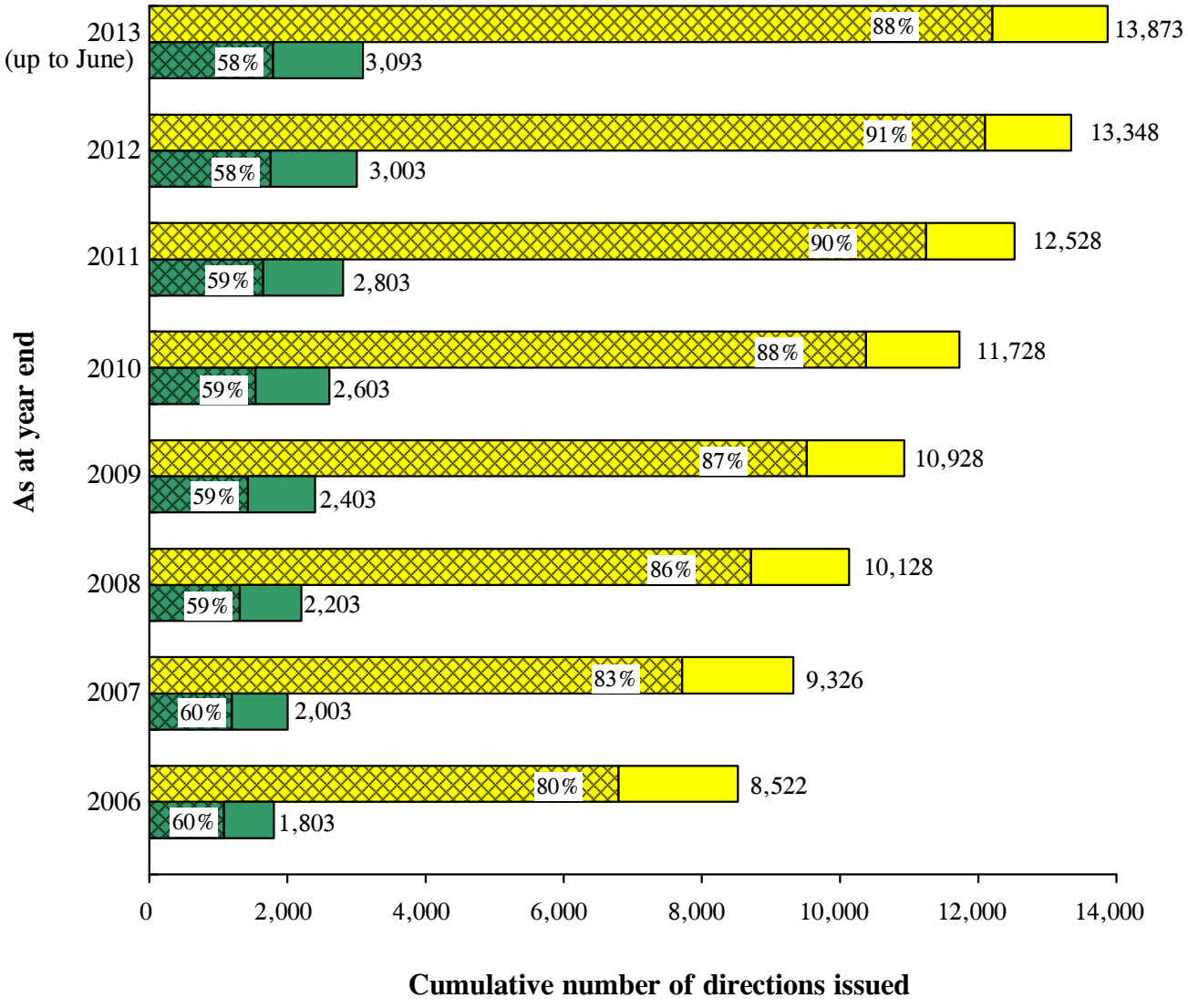
2.12 From 1997 (the commencement of the improvement programme) to June 2013, the BD and FSD had inspected 2,269 (75%) of the targeted 3,035 Prescribed Commercial Premises. As at 30 June 2013, the BD had issued 3,093 directions for 1,720 Prescribed Commercial Premises while the FSD had issued 13,873 directions for 1,721 Prescribed Commercial Premises (Note 8). Analyses of the compliance rates of directions issued for Prescribed Commercial Premises and the percentages of the Premises having complied with all directions issued (Note 9) from 2006 to 2013 (up to 30 June) are shown in Figures 1 and 2 respectively.

Note 8: *A separate fire safety direction is issued to each owner (and also occupier in case of directions issued by the FSD). As most target buildings/premises require improvement works by more than one owner and occupier, the total number of directions issued is greater than the number of target buildings/premises with directions issued.*

Note 9: *The compliance rate of directions issued was calculated by dividing the cumulative number of directions having been complied with by the total number of directions issued since 1997. The percentage of Prescribed Commercial Premises having complied with all directions was calculated by dividing the cumulative number of Prescribed Commercial Premises having complied with all directions by the total number of Prescribed Commercial Premises issued with directions since 1997.*

Figure 1

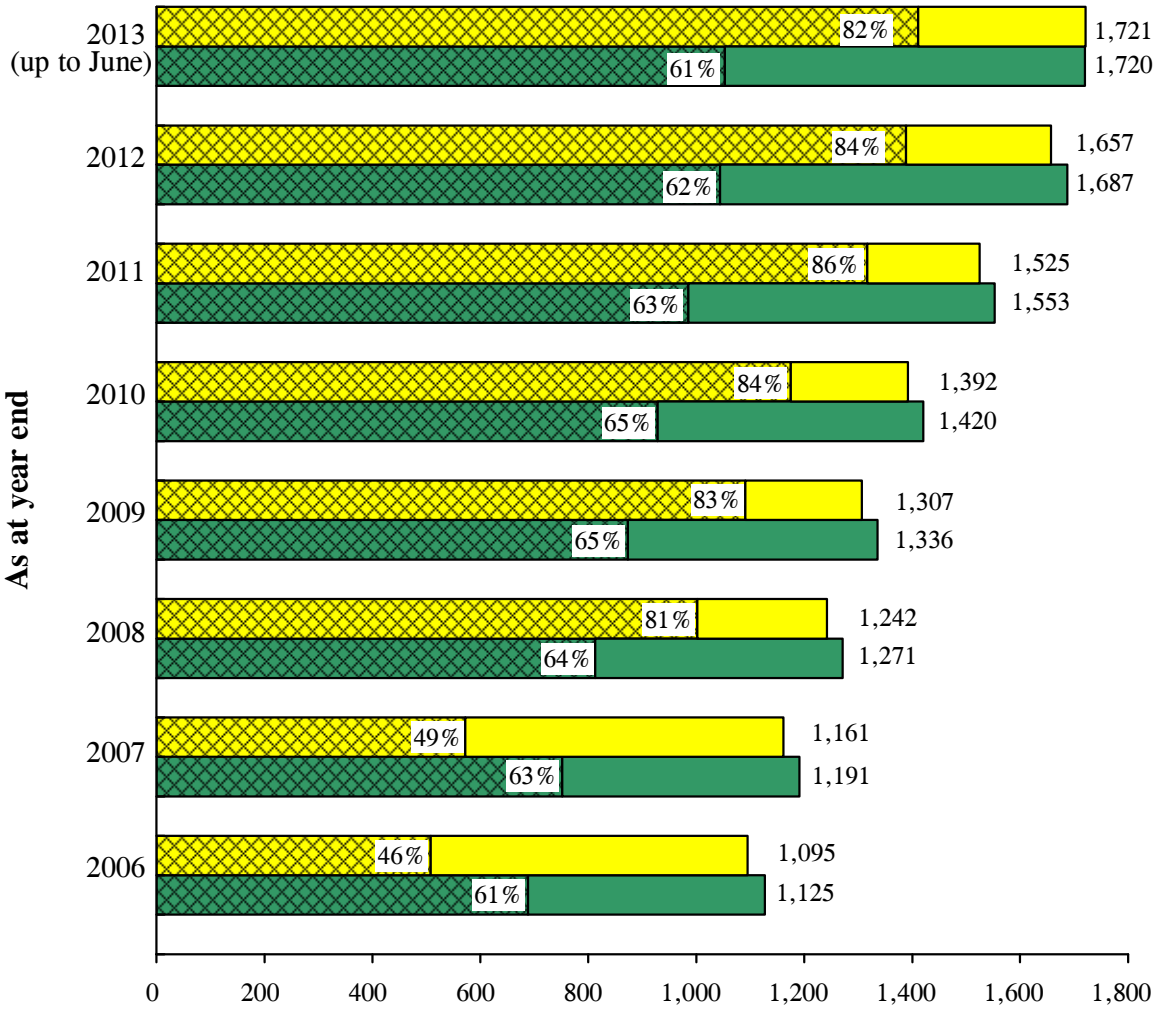
Cumulative number of directions issued for Prescribed Commercial Premises and percentages of the directions having been complied with (2006 to June 2013)



Source: *BD and FSD records*

Figure 2

Cumulative number of Prescribed Commercial Premises issued with directions and percentages of the Premises having complied with all directions (2006 to June 2013)



Legend:
- Premises with directions issued by the FSD
- Percentage of premises having complied with all FSD's directions
- Premises with directions issued by the BD
- Percentage of premises having complied with all BD's directions

Source: *BD and FSD records*

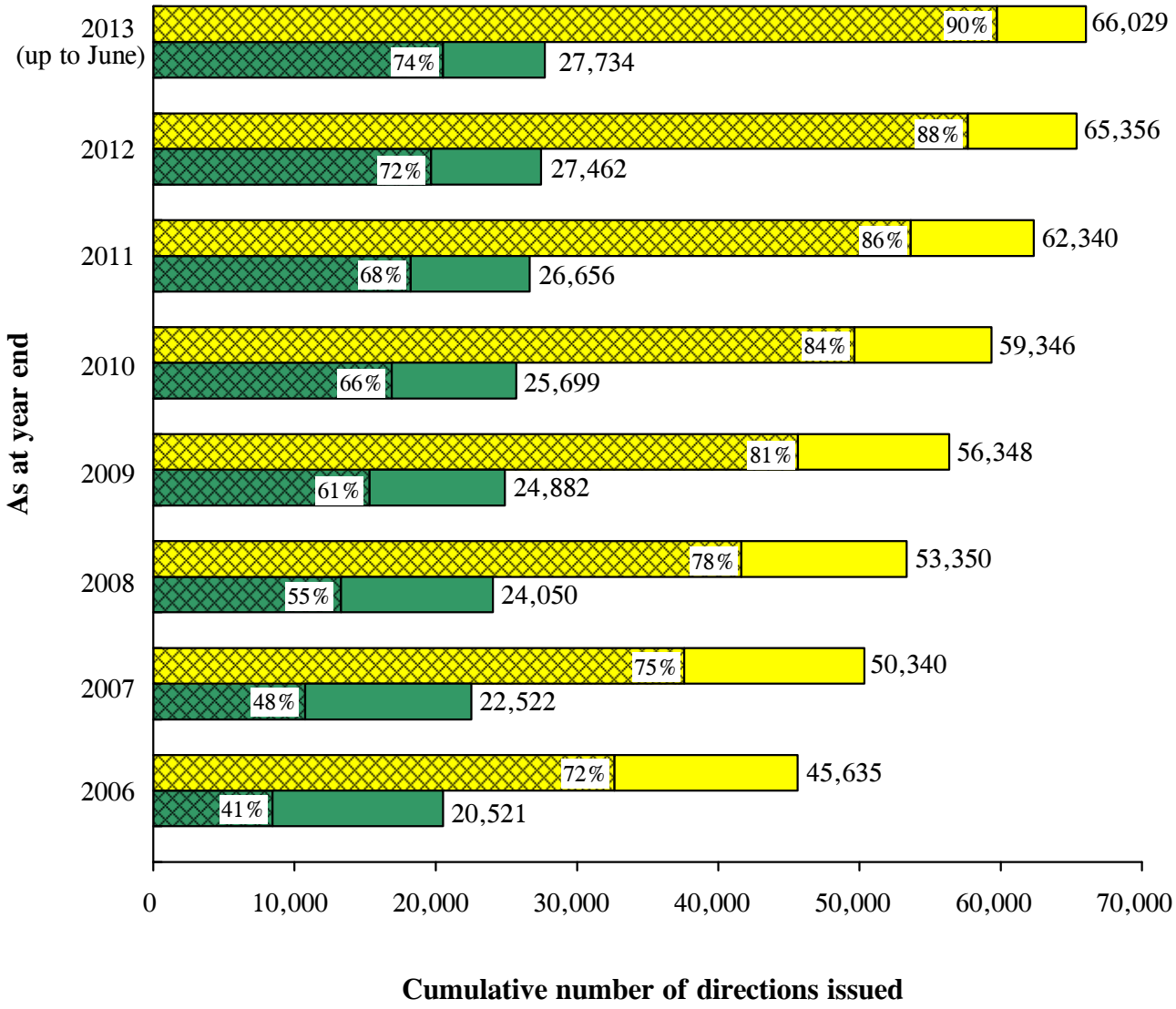
Compliance position of Specified Commercial Buildings

2.13 From 1998 (the commencement of the improvement programme) to June 2013, the BD and FSD had inspected 1,573 (88%) of the targeted 1,783 Specified Commercial Buildings. As at 30 June 2013, the BD had issued 27,734 directions for 1,286 Specified Commercial Buildings while the FSD had issued 66,029 directions for 1,301 Specified Commercial Buildings. The compliance rates of directions issued for Specified Commercial Buildings and the percentages of the Buildings having complied with all directions issued (Note 10) from 2006 to 2013 (up to 30 June) are shown in Figures 3 and 4 respectively.

Note 10: *The compliance rate of directions issued was calculated by dividing the cumulative number of directions having been complied with by the total number of directions issued since 1998. The percentage of Specified Commercial Buildings having complied with all directions was calculated by dividing the cumulative number of Specified Commercial Buildings having complied with directions by the total number of Specified Commercial Buildings issued with directions since 1998.*

Figure 3

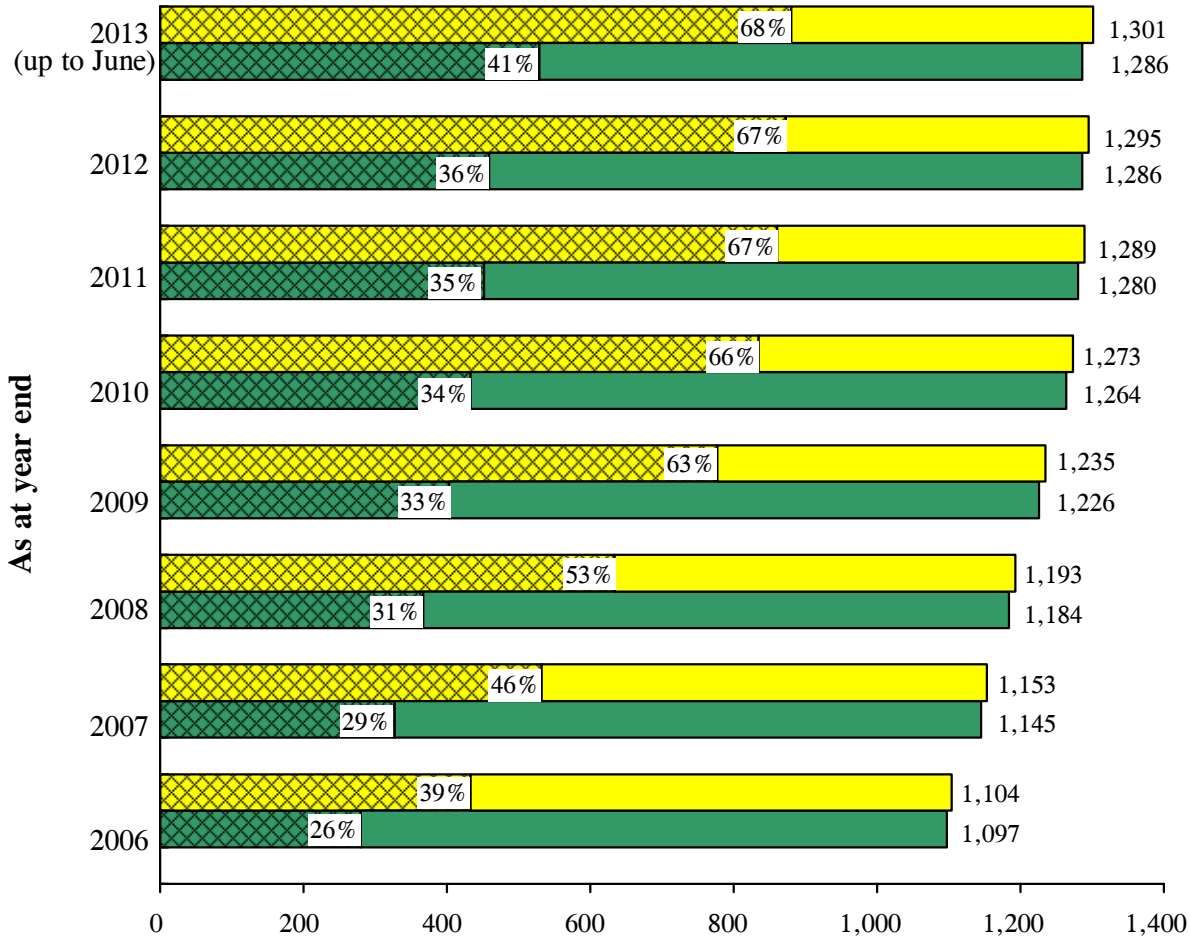
Cumulative number of directions issued for Specified Commercial Buildings and percentages of the directions having been complied with (2006 to June 2013)



Source: *BD and FSD records*

Figure 4

Cumulative number of Specified Commercial Buildings issued with directions and percentages of the Buildings having complied with all directions (2006 to June 2013)



Legend:
- Buildings with directions issued by the FSD
- Percentage of buildings having complied with all FSD's directions
- Buildings with directions issued by the BD
- Percentage of buildings having complied with all BD's directions

Source: *BD and FSD records*

2.14 The compliance situation of both Prescribed Commercial Premises and Specified Commercial Buildings warranted the BD management's attention because:

(a) ***Prescribed Commercial Premises.*** From 2006 to June 2013, the compliance rates for the BD's directions decreased from 60% to 58% (see Figure 1); and

(b) ***Specified Commercial Buildings.*** Over the same period, while the compliance rates for the BD's directions increased from 41% to 74%, the percentage of compliant Specified Commercial Buildings for the BD's directions only increased from 26% to 41% (see Figures 3 and 4). Given that the FS(CP)O had been in operation for some 15 years, a compliance rate of 41% is not satisfactory.

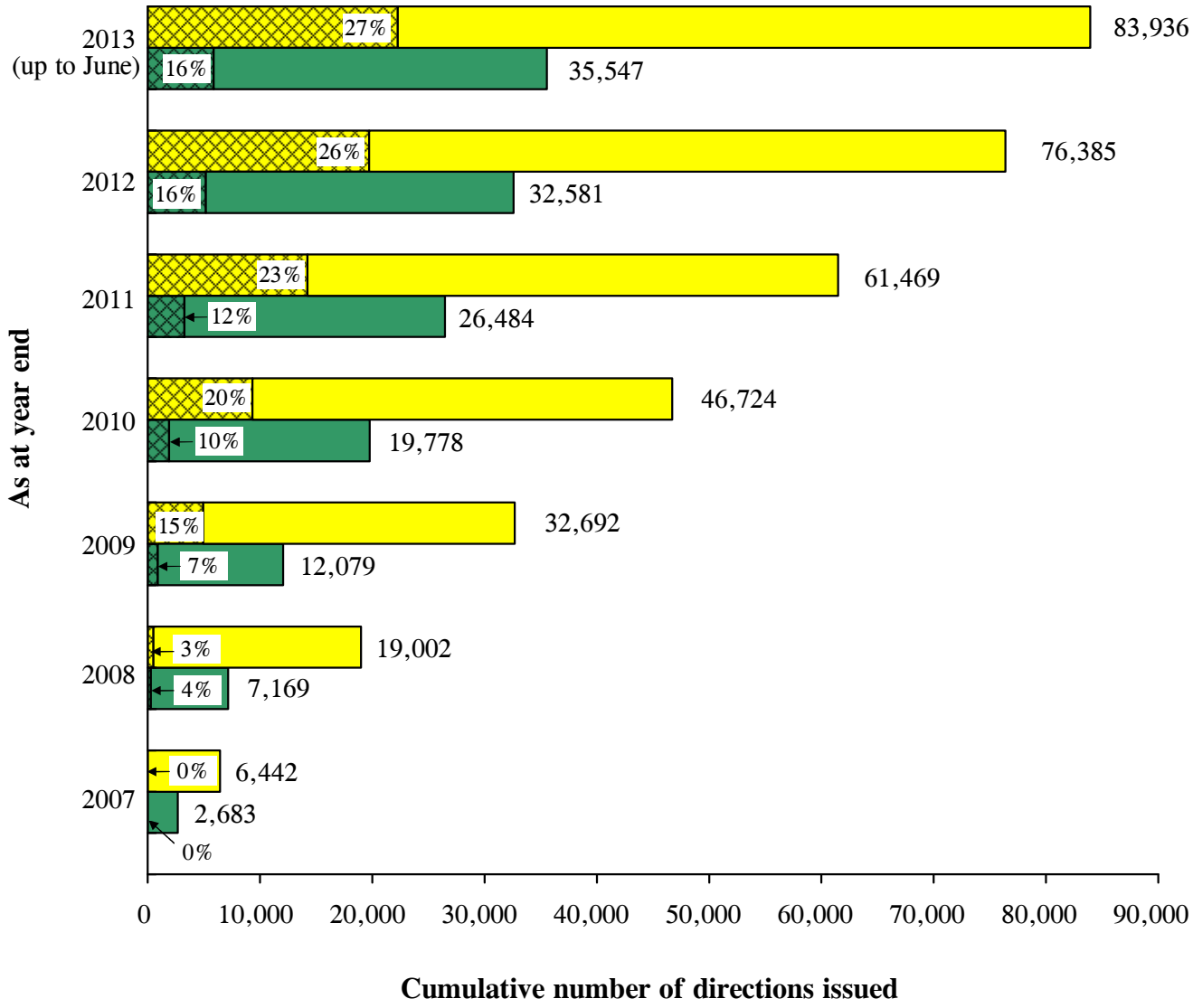
Compliance position for Target Composite Buildings

2.15 From 2007 (the commencement of the improvement programme) to June 2013, the BD and FSD had inspected 6,461 (72%) of the 9,000 Target Composite Buildings. As at 30 June 2013, the BD had issued 35,547 directions for 3,564 Target Composite Buildings while the FSD had issued 83,936 directions for 3,564 Target Composite Buildings. Analyses of the compliance rates of directions issued for Target Composite Buildings and the percentages of Target Composite Buildings having complied with all directions issued (Note 11) from 2007 to 2013 (up to 30 June) are shown in Figures 5 and 6 respectively.

Note 11: *The compliance rate of directions issued was calculated by dividing the cumulative number of directions having been complied with by the total number of directions issued since 2007. The percentage of Target Composite Buildings having complied with all directions was calculated by dividing the cumulative number of Target Composite Buildings having complied with directions by the total number of Target Composite Buildings issued with directions since 2007.*

Figure 5

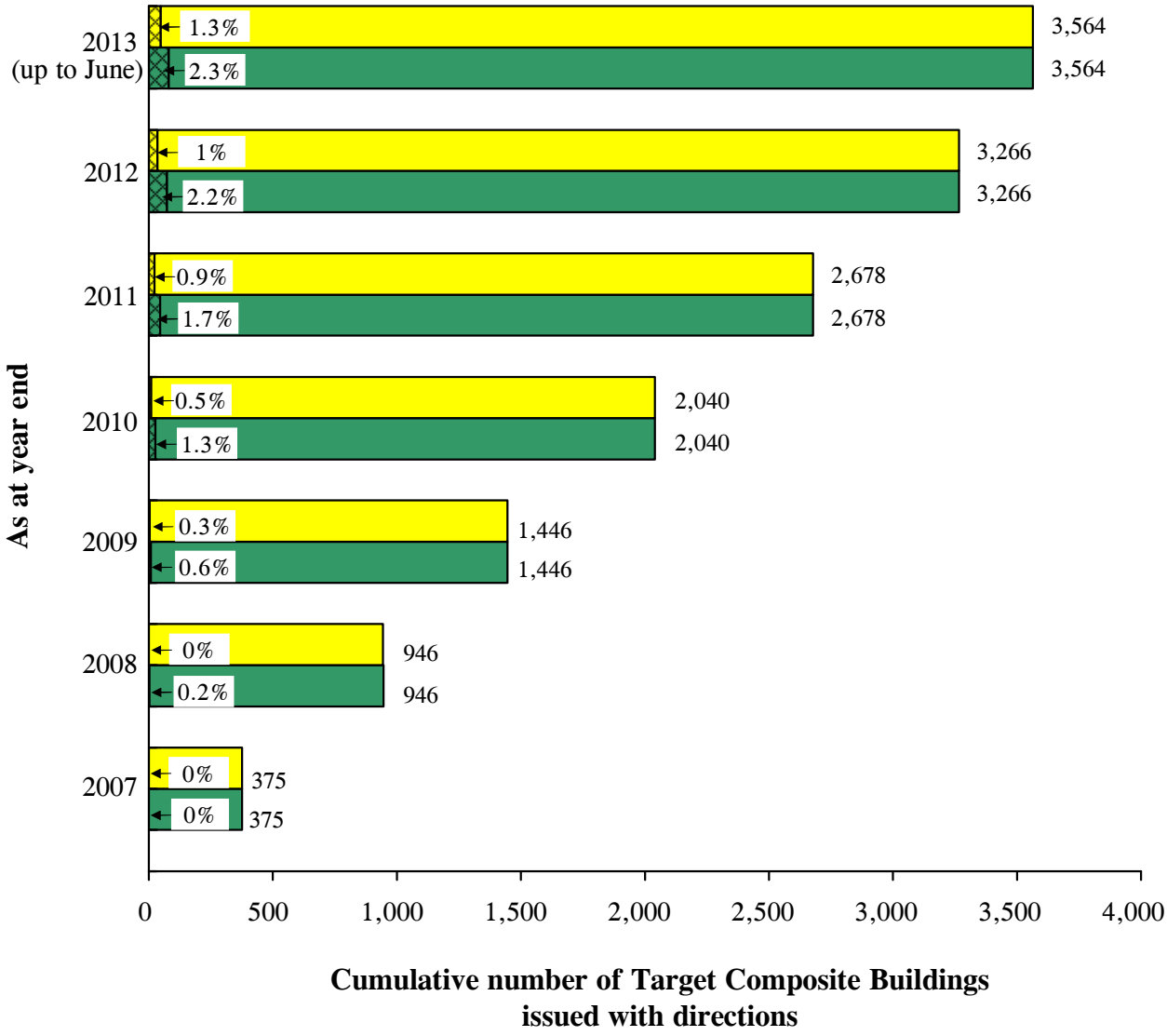
Cumulative number of directions issued for Target Composite Buildings and percentages of the directions having been complied with (2007 to June 2013)



Source: *BD and FSD records*

Figure 6

Cumulative number of Target Composite Buildings issued with directions and percentages of the Buildings having complied with all directions (2007 to June 2013)



Legend:
- Premises with directions issued by the FSD
- Percentage of premises having complied with all FSD's directions
- Premises with directions issued by the BD
- Percentage of premises having complied with all BD's directions

Source: *BD and FSD records*

2.16 The low compliance rates of directions issued for Target Composite Buildings are a cause for concern, given that the FS(B)O has been in operation for some six years. Audit considers that the BD and FSD should step up efforts to improve the compliance rates of directions issued for Target Composite Buildings.

2.17 While it is the primary responsibility of the owners/occupiers concerned to upgrade the fire safety provisions of their buildings/premises as required under the fire safety directions, the BD and FSD, as the enforcement authorities, have a role in:

(a) carrying out statutory duties in an efficient manner, such as promptly issuing directions after inspections of the target buildings/premises (see paras. 3.19 to 3.27);

(b) facilitating owners/occupiers in complying with the directions (see paras. 2.18 to 2.22); and

(c) taking effective enforcement action to compel compliance in warranted cases (see paras. 4.10 and 4.11).

Formation of OCs

2.18 Implementation of the fire safety improvement programmes for Target Composite Buildings is generally more difficult than that of Prescribed Commercial Premises and Specified Commercial Buildings. This is because while Prescribed Commercial Premises and Specified Commercial Buildings are usually owned/occupied by business people, some owners residing in Target Composite Buildings are elderly and may not have the knowledge and means to go about the required works. For Target Composite Buildings without OCs to coordinate the improvement works in the common parts of the buildings, the difficulty in complying with the fire safety directions is even greater. In these cases, the directions for common parts are issued to all owners. For every change of ownership in any individual unit, the BD and FSD have to reissue the directions with a new compliance period thus prolonging the overall implementation time.

2.19 From 2004 to 2007, in preparation for implementing the FS(B)O, the BD and FSD inspected about 3,200 Target Composite Buildings and identified those without OCs so that the HAD could start early in assisting them to form OCs (see para. 2.5).

2.20 However, since the implementation of the FS(B)O in 2007, the BD and FSD have only sought the HAD's assistance on a case-by-case basis. After inspecting a Target Composite Building, they would check with the Land Registry the owners' information for the issue of directions at which time they would also enquire about the existence of OCs for the Target Composite Building concerned. For a Target Composite Building without an OC, the HAD would then be informed to take action. The formation of OCs takes time and liaison efforts by the HAD. As a result, OCs may not be formed in time for coordinating the required improvement works. As at February 2013, of the 3,358 Target Composite Buildings with directions issued, only 1,393 (41%) had OCs or were under single ownership. To improve the situation, the BD and FSD may consider sharing the inspection plans (Note 12) with the HAD as early as practicable. By making such information available to the HAD before the commencement of the BD/FSD's joint inspections, the HAD would have more time to plan its liaison work to provide timely assistance to owners of target composite/domestic buildings which do not have OCs.

Financial and other assistance

2.21 In 2005 (before the implementation of the FS(B)O), the BD and FSD carried out a survey on owners of target commercial buildings and composite buildings to evaluate the effectiveness of the Building Safety Loan Scheme. While 79% of the commercial unit owners surveyed had no financial need to apply for the loan, only 46% of the domestic unit owners indicated that they had no such need. The survey results suggested about half of the domestic unit owners of Target Composite Buildings and Target Domestic Buildings would have a need for financial assistance in implementing the required works under the FS(B)O.

Note 12: *As at 30 June 2013, there were 2,539 Target Composite Buildings and 3,000 Target Domestic Buildings on the inspection list awaiting inspection.*

2.22 With the FS(B)O in operation for some six years, there is merit to conduct another survey to find out whether the existing financial assistance and technical support are meeting the owners' needs so that further improvement measures can be taken accordingly. For example, Audit notes that in the attachments to the fire safety directions issued by the BD and FSD, owners are only advised to contact the Hong Kong Housing Society and the Urban Renewal Authority through their hotlines and websites for details of the financial assistance under the Integrated Building Maintenance Assistance Scheme. In Audit's view, handy information such as the leaflet introducing the Scheme can be sent for easy reference of owners.

Audit recommendations

2.23 **Audit has *recommended* that the Director of Buildings and the Director of Fire Services should:**

(a) **consider providing more performance information in the BD's and FSD's CORs (such as the cumulative compliance information) to enable stakeholders to have a better picture of the progress made in upgrading the fire safety provisions of Prescribed Commercial Premises/Specified Commercial Buildings/Target Composite Buildings;**

(b) **step up efforts to improve the compliance rates of fire safety directions, especially those for Target Composite Buildings, and those issued by the BD for Prescribed Commercial Premises and Specified Commercial Buildings;**

(c) **share the inspection plans with the HAD as early as practicable, so as to allow the HAD more time to plan its liaison work to provide timely assistance to owners of target composite/domestic buildings which do not have OCs;**

(d) **conduct another survey to find out whether the Government's financial assistance and technical support are meeting the owners' needs so that improvement measures can be taken accordingly; and**

(e) **send promotional leaflets of the available financial assistance schemes to owners together with the directions.**

Response from the Administration

2.24 The Director of Buildings agrees with the audit recommendations. He has said that:

(a) in recent years, the actual numbers of target buildings/premises issued with directions and with directions complied with were generally in line with the annual estimates. Due to the inherent nature and complexity of the fire safety improvement works involved, owners will sometimes need more time to submit alternative measures to the BD for consideration. Hence, more time is taken to carry out the works required under the BD's directions; and

(b) while compliance rates would largely depend on owners' effort, the BD would consider stepping up efforts to improve the compliance rates.

2.25 The Director of Fire Services agrees with the audit recommendations. He has said that:

(a) the FSD has hitherto maintained cumulative compliance information for internal reference. The BD and FSD will work out the relevant performance information for inclusion in their CORs as appropriate; and

(b) the following effort will be made to improve the compliance rates of Target Composite Buildings:

(i) paying more visits/inspections and issuing reminding letters/warning letters to OCs/owners/occupiers;

(ii) actively arranging meetings with OCs/owners/occupiers; and

(iii) continuing to explore and apply flexible and pragmatic approach to help owners/occupiers comply with the fire safety improvement measures.

2.26 The Director of Home Affairs welcomes the BD and FSD to inform the HAD of the inspection results of those buildings without OCs as early as possible. She has also said that:

(a) the HAD endeavours to encourage and assist owners to form OCs to foster better building management; and

(b) the crux of OC formation is the participation of owners. The HAD's observation is that owners usually become more proactive and are more willing to support the formation of an OC after they have received statutory orders or directions issued by the BD, FSD or other government departments.

PART 3: ARRANGEMENTS FOR INSPECTIONS AND ISSUING FIRE SAFETY DIRECTIONS

3.1 This PART examines the BD's and FSD's operational arrangements for:

(a) inspecting target buildings and premises (paras. 3.2 to 3.14); and

(b) issuing fire safety directions (paras. 3.15 to 3.31).

Arrangements for inspecting target buildings and premises

3.2 For implementing the fire safety improvement programmes under the FS(CP)O and FS(B)O, the BD and FSD carry out joint inspections of the target buildings and premises. Having regard to the total number of target buildings and premises to be covered in each phase of the respective improvement programmes (see Table 1 in para. 2.2), the BD and FSD have set annual inspection targets in their CORs (see Table 3).

Table 3

Annual inspection targets

Target buildings/premises	Annual inspection targets (Number)	Target year
Prescribed Commercial Premises	150	1998 to 2013
Specified Commercial Buildings	140 30 (Note) 40	1999 to 2007 2008 2009 to 2013
Target Composite Buildings	900 840 1,150	2007 2008 2009 to 2013

Source: BD and FSD's CORs

Note: The annual inspection target has been reduced from 2008 onwards due to the smaller number of remaining Specified Commercial Buildings and many of which were built in the 1980s with larger size and more complicated layout.

Compilation of inspection lists

3.3 ***Prescribed Commercial Premises.*** Before the commencement of each phase of the improvement programmes for Prescribed Commercial Premises, the BD provides the FSD with a list of commercial, industrial and composite buildings with occupation permits issued within the scheduled period for that phase. The FSD carries out scouting exercises of these buildings to identify Prescribed Commercial Premises for compiling an inspection list for agreement with the BD. The five types of Prescribed Commercial Premises are prioritised according to their years of occupation.

3.4 ***Specified Commercial Buildings and Target Composite Buildings.*** The BD is responsible for compiling the inspection lists for Specified Commercial Buildings and Target Composite Buildings based on the dates of occupation permits of these buildings. With reference to the number of target buildings to be jointly inspected by the FSD each year, the BD would select buildings primarily in accordance with their age (starting with the oldest). According to the BD's operation manual, other considerations include:

(a) a higher priority for a building identified as having a higher fire risk (e.g. as revealed by complaints and other operations of the BD and FSD);

(b) a lower priority for a building that has undergone major repair in an earlier large scale operation (see para. 3.18) not more than four years from the date of the scheduled inspection; and

(c) the need for taking synchronised actions on target buildings that are under any BD's current large scale operations to facilitate owners' works for complying with different statutory requirements in one go as far as possible.

Identification of Prescribed Commercial Premises

3.5 The prescribed commercial activities under the FS(CP)O are specified in Schedule 1 of the Ordinance as:

(a) banking (other than merchant banking);

(b) conduct of off-course betting;

(c) conduct of a jewelry or goldsmith's business on premises which have a security area;

(d) use as a supermarket, hypermarket or department stores; and

(e) use as a shopping arcade.

3.6 Audit scrutiny of the inspection lists of Prescribed Commercial Premises drawn up by the FSD after its scouting exercises of 2003 and 2008 revealed that certain chain shops selling furniture and household items were included as Prescribed Commercial Premises. However, other chain shops selling similar products were not. To prevent omission and inconsistency in drawing up of the Prescribed Commercial Premises inspection list, the FSD should provide adequate guidance for scouting exercises.

Pre-war buildings

3.7 In general, the BD selects buildings primarily in accordance with their age (starting with the oldest) for compiling the Specified Commercial Building and Target Composite Building inspection lists. The BD's records showed that as at 30 June 2013, there were 502 pre-war buildings that fell within the scope of the FS(CP)O or FS(B)O. The BD and FSD had inspected 232 (46%) of them. The remaining 270 (54%) pre-war buildings comprised 8 Specified Commercial Buildings and 262 Target Composite Buildings.

3.8 According to the BD, some pre-war buildings had practical difficulties to comply with fire safety construction requirements under the relevant Codes of Practice (see para. 1.3(a) and (b)) due to site and structural constraints. To address

the issue, the BD and FSD have commenced a study (Note 13) on a pilot cluster of pre-war buildings. The study is targeted for completion in 2014. Given that 270 pre-war buildings have not been inspected, there is a need to expedite actions in this regard so that the fire safety measures of pre-war buildings can be improved as soon as practicable.

Utilities buildings

3.9 According to the FS(CP)O, a commercial building under the scope of this Ordinance:

(a) means the whole of a non-domestic building which was constructed to be used or is being used for the purposes of an office, business, trade or entertainment; and

(b) does not include the whole of a non-domestic building which was constructed to be used or is being used exclusively for such purposes as utilities buildings, hospitals, hotels and serviced apartments.

3.10 Audit examination revealed that the BD had taken a long time to determine whether some utilities buildings which had been partly used as offices could still be regarded as exclusively used for utilities purpose and exempted from the FS(CP)O. Up to August 2013, the BD had not taken any enforcement actions on these buildings as summarised in Case 1 below.

Note 13: *The study aims to consider any alternative improvement measures in respect of the fire safety construction requirements as specified in the directions that may be submitted by the owners. With the experience gained in the pilot scheme, appropriate flexible alternative requirements may be accepted in similar pre-war buildings.*

Case 1

Utilities buildings partly used as office

1. The BD and FSD jointly inspected a utilities building (Building A) in 2001, and another utilities building (Building B) in 2004. In both cases, it was found that: (a) the buildings were partly used as office; and (b) there were deficiencies in the fire safety provisions.

2. However, there were different views within the BD on whether these utilities buildings partly used as office should be exempted from the FS(CP)O. Between 2004 and 2011, a number of BD internal meetings were held, but to no avail.

3. In June 2011, the BD finally decided that Buildings A and B should not be exempted from the FS(CP)O. The inspection teams responsible for Buildings A and B were instructed to take appropriate follow-up action.

4. Notwithstanding the decision made in June 2011, Audit noted that up to August 2013, no enforcement action had been taken on both Buildings A and B. Audit also noted that the BD and FSD, in 2007, jointly inspected two other utilities buildings (Buildings C and D) that were also partly used as office, but had not carried out follow-up enforcement action on the deficiencies in their fire safety provisions.

Audit comments

5. The BD had taken a long time (from 2004 to 2011) to ascertain whether Buildings A and B should be exempted from the FS(CP)O. While a decision was made in 2011, no follow-up enforcement action had been taken during the two years up to August 2013. The BD should expedite action on these two utilities buildings, and also ascertain whether Buildings C and D, and other similar utilities buildings should also be subject to the FS(CP)O.

Source: BD records

Audit recommendations

3.11 **Audit has *recommended* that the Director of Fire Services should:**

(a) **provide adequate guidance to FSD staff for identifying Prescribed Commercial Premises; and**

(b) **in conjunction with the Director of Buildings, review the Prescribed Commercial Premises inspection list to see if there are inconsistency and omission in identifying Prescribed Commercial Premises similar to that mentioned in paragraph 3.6 and take necessary action accordingly.**

3.12 **Audit has *recommended* that the Director of Buildings should:**

(a) **in conjunction with the Director of Fire Services, expedite actions on the pilot study of pre-war buildings with a view to improving the fire safety measures of pre-war buildings as soon as practicable;**

(b) **expedite actions on Buildings A and B (see Case 1 in para. 3.10) that the BD had determined to be subject to FS(CP)O; and**

(c) **ascertain whether Buildings C and D, and other similar utilities buildings should also be subject to the FS(CP)O without further delay.**

Response from the Administration

3.13 The Director of Fire Services agrees with the audit recommendations in paragraph 3.11. He has said that the FSD will, in conjunction with the BD, review the Prescribed Commercial Premises inspection list in the 2013 scouting exercise to see if there is any omitted inclusion of Prescribed Commercial Premises.

3.14 The Director of Buildings agrees with the audit recommendations in paragraph 3.12. He has said that:

(a) pending the outcome of the pilot study mentioned in paragraph 3.8, the BD will derive a strategy in handling all the pre-war buildings; and

(b) pre-war buildings are subject to periodic inspections by the Existing Buildings Division. Enforcement action will be taken against serious deficiencies in structural and fire safety which constitute obvious hazard or imminent danger to life or property as appropriate.

Arrangements for issuing fire safety directions

3.15 After a joint inspection, the BD and FSD will separately prepare their own directions. To avoid confusion to owners, the BD and FSD have agreed to jointly issue the directions (as far as possible on an agreed date) which are to be sent by the FSD using registered mail.

3.16 In the 2004 review, Audit found that of the 785 Specified Commercial Buildings inspected up to 31 March 2004, 238 (30%) had fire safety directions issued six months or more after inspections. Similar situation was noted for Prescribed Commercial Premises. As long time taken in issuing directions had knock-on effect on subsequent enforcement steps, Audit had recommended that the BD and FSD should issue directions promptly and set performance target for their staff.

Instructions and guidelines

3.17 Regarding the preparation and issuing of directions, the BD and FSD have issued the following guidelines for their staff:

(a) ***BD's guidelines.*** The inspection team and the Building Surveyor in charge are responsible for preparing detailed inspection reports showing the existing conditions of the buildings/premises and the recommended follow-up action (which should be feasible and practicable, taking into consideration the structural and spatial constraints). Directions will then be prepared for the Senior Building Surveyor's endorsement. Directions should in principle be issued within four months. However, other factors such as the complexity of the cases, synchronisation with large scale operation should also be taken into account (see para. 3.18); and

(b) ***FSD's guidelines.*** The inspection officer should compile the inspection report for endorsement by his supervisors within ten weeks (for cases under the FS(B)O) after the inspection. The fire safety direction should then be ready for issue within ten working days for FS(B)O cases or 14 working days for FS(CP)O cases after receipt of necessary information, such as owners' particulars from the BD. Should the BD fail to provide the necessary details within four months from the inspection date for Prescribed Commercial Premises/Specified Commercial Buildings and within two months for Target Composite Buildings, the inspection officer should liaise with the relevant BD staff. Reasons for any delay should be brought to the attention of the Divisional Officer concerned for follow-up action at the quarterly liaison meetings with the BD.

3.18 ***Synchronised action.*** Since 1999, the Existing Buildings Division of the BD has carried out large scale operations (Note 14) each year to combat the problem of UBWs under the Buildings Ordinance. As UBWs may be found during inspections of target buildings under the FS(CP)O and FS(B)O, the BD has laid down the following guidelines for staff of the Fire Safety Section:

(a) synchronised action should be taken as far as possible on target buildings under the BD's large scale operations for UBWs to facilitate owners in carrying out necessary works for complying with the Buildings Ordinance and FS(CP)O or FS(B)O in one go; and

(b) actionable items under a large scale operation should not overlap with the required improvement works under the FS(CP)O or FS(B)O. Items involving improvement should be included in the directions issued under the FS(CP)O or FS(B)O for better results.

Note 14: *Each large scale operation tackles specific types of UBWs with a view to eliminating hazards to the public. For each operation, comprehensive action is taken against all such UBWs found in target buildings.*

Long time taken in issuing directions

3.19 In this audit review, Audit found that the timeliness in issuing fire safety directions had not improved over the years. Of the 1,573 Specified Commercial Buildings inspected up to 30 June 2013, 471 (30%, same as that in 2004 — see para. 3.16) had fire safety directions issued six months or more after inspections. With respect to the internal target of issuing directions within four months (see para. 3.17(a)), the extent of achievement as at 30 June 2013 for Prescribed Commercial Premises/Specified Commercial Buildings/Target Composite Buildings is summarised in Table 4.

Table 4

Extent of achievement of internal time target on issuing directions
(30 June 2013)

Target buildings/premises		Number of		
		Prescribed Commercial Premises	**Specified Commercial Buildings**	**Target Composite Buildings**
Directions issued	Within 4 months	694 (40%)	556 (43%)	855 (24%)
	More than 4 months (delayed cases)	1,026 (60%)	730 (57%)	2,709 (76%)
	Total	1,720 (100%)	1,286 (100%)	3,564 (100%)
Directions to be issued	Within 4 months	41 (9%)	14 (8%)	423 (15%)
	More than 4 months (overdue cases)	406 (91%)	163 (92%)	2,450 (85%)
	Total	447 (100%)	177 (100%)	2,873 (100%)

Source: *Audit analysis of BD records*

Remarks: *The total numbers of buildings/premises with directions issued/to be issued are less than the total numbers of buildings/premises inspected (see paras. 2.12, 2.13 and 2.15) because no directions were required to be issued for some buildings/premises inspected.*

3.20 Ageing analyses of the delayed and overdue cases as at 30 June 2013 are shown in Tables 5 and 6.

Table 5

Ageing analysis of delayed cases
(30 June 2013)

Period of delay (Note)	Number of		
	Prescribed Commercial Premises	**Specified Commercial Buildings**	**Target Composite Buildings**
Less than 1 year	723 (70%)	554 (76%)	1,926 (71%)
1 year to less than 3 years	221 (22%)	157 (21%)	724 (27%)
3 years to less than 5 years	63 (6%)	18 (3%)	58 (2%)
5 years or more	19 (2%)	1 (–)	1 (–)
Total	1,026 (100%)	730 (100%)	2,709 (100%)
Average delay period	11 months	8 months	9 months

Source: *Audit analysis of BD records*

Note: *The period of delay for each case was counted from the date after the lapse of the targeted 4 months.*

Table 6

Ageing analysis of overdue cases
(30 June 2013)

Period of overdue (Note)	Number of		
	Prescribed Commercial Premises	Specified Commercial Buildings	Target Composite Buildings
Less than 1 year	69 (17%)	34 (22%)	1,012 (41%)
1 year to less than 3 years	147 (36%)	45 (27%)	1,178 (48%)
3 years to less than 5 years	122 (30%)	39 (24%)	222 (9%)
5 years or more	68 (17%)	45 (27%)	38 (2%)
Total	406 (100%)	163 (100%)	2,450 (100%)
Average overdue period	36 months	40 months	18 months

Source: *Audit analysis of BD records*

Note: *The period of overdue for each case was counted from the date after the lapse of the targeted 4 months.*

3.21 The large number of inspected buildings/premises with directions overdue for issuing (i.e. averaging 36 months for 406 Prescribed Commercial Premises, 40 months for 163 Specified Commercial Buildings and 18 months for 2,450 Target Composite Buildings) is unsatisfactory as the implementation of the fire safety improvement programmes would be prolonged (see paras. 3.24 to 3.27 for examples) as a result. In fact, a long delay in issuing directions may require re-inspection since the conditions of the target buildings/premises and owners' particulars may have changed. The BD and FSD need to take effective measures to clear the backlog taking into account the observations in paragraphs 3.22 to 3.27.

Performance targets on inspection and issuing directions

3.22 As mentioned in paragraph 3.2, the BD and FSD have set annual inspection targets in their CORs. Since 2009, the BD and FSD have increased the annual inspection target for Target Composite Buildings to 1,150 (up from 840 in 2008, and 900 in 2007) in order to speed up the implementation of the improvement programme under the FS(B)O. While the inspection target of 1,150 was largely met from 2009 to 2013, the large number of directions pending issuance raised the question on whether the objective of speeding up the implementation of the improvement programme has been fully achieved. Inspection is only the first step in the process of improving fire safety of old buildings. The BD and FSD need an overall strategy to achieve concurrently the inspection target and the time target of issuing directions for all inspected buildings. Otherwise, owners of inspected buildings would not be informed of the required improvement works in a timely manner. Moreover, the inspection effort could be wasted as re-inspection may be required before directions are issued. In Audit's view, there is a need to review the present inspection target to see if it is commensurate with the BD's and FSD's capacity in issuing directions for all inspected buildings within 4 months after inspection.

3.23 Moreover, unlike the inspection target, the target to issue directions within four months after inspection is an internal guideline for staff (see para. 3.17). This target is not published in the CORs as a performance measure. To enhance transparency, the BD and FSD need to consider including this time target as a performance measure in their CORs.

Case studies

3.24 Audit selected 20 delayed cases (comprising 4 Prescribed Commercial Premises, 5 Specified Commercial Buildings and 11 Target Composite Buildings) for examination and found in 14 cases (Note 15) that there was room for improvement in one of the following areas:

Note 15: *Of the remaining 6 cases, there were justified circumstances leading to the delays. For example in one case, a Specified Commercial Building was found vacant during a joint inspection in 1998. The owner indicated that the building would be demolished for re-development. In 2002, after learning that the owner would renovate instead of demolishing the Specified Commercial Building, the BD and FSD issued directions accordingly.*

(a) timely preparation of inspection reports (see Case 2 and para. 3.25);

(b) timely determination of the Prescribed Commercial Premises boundary by the BD (see Case 3 and para. 3.26); and

(c) synchronisation of actions for target buildings under the BD's large scale operation (see Case 4 and para. 3.27).

Case 2

Long time taken in preparing inspection reports for a Target Composite Building

1. In March 2010, the BD and FSD jointly inspected the subject Target Composite Building. However, they had not prepared inspection reports for issuing fire safety directions within four months after the inspection. The FSD completed its inspection report in September 2010 (i.e. six months after the inspection) and the BD took some 14 months to complete its report in May 2011. There was no documented reason for the long time taken.

2. In the event, directions (14 by the FSD and 3 by the BD) were only issued in August 2011 (17 months after the joint inspection). According to the directions, the fire safety requirements for the building included: (a) a fire hydrant/hose reel system and manual fire alarm system for common areas; (b) automatic sprinkler system and emergency lighting for the shops of ground floor and cockloft; and (c) sealing up door openings of certain flats with walls having a fire resistance period of not less than one hour.

Source: BD and FSD records

3.25 Besides Case 2, audit examination revealed three other cases in which the BD and FSD took some 5 to 13 months to complete their inspection reports. There was also no documented reason for the long time taken. These cases indicated a need for strengthening management control to improve the situation. In this connection, Audit notes the following areas for improvement:

(a) the FSD needs to enhance its computer system to facilitate case management and monitoring the timeliness of its enforcement actions (see para. 4.5); and

(b) the BD needs to make effective use of the management information in its computer database and the Progress Monitoring Committee (Note 16) to monitor the timeliness in preparing inspection reports.

Note 16: *The Progress Monitoring Committee is chaired by a Chief Building Surveyor (as head of the Fire Safety Section) and comprises Senior Building Surveyors in charge of the inspection teams as members. The terms of reference of the meeting are to monitor the progress of achievement of the COR targets, and review outstanding and problem cases in enforcing the FS(CP)O and FS(B)O.*

Case 3

Long time taken in determining the Prescribed Commercial Premises boundary

1. In August 2006, the BD and FSD conducted a joint inspection of the subject Prescribed Commercial Premises (a shopping arcade). While the FSD prepared its inspection report for issuing fire safety directions in August 2006, the BD's inspection report was still outstanding in December 2006 (four months after inspection).

2. From 2006 to 2012, the FSD made repeated enquiries about the BD's progress and was informed that the premises boundary (Note) had not yet been determined. From July to November 2012, the BD re-inspected the premises. In January 2013, the BD informed the FSD that the boundary of the premises was determined. After FSD's re-inspection in June 2013, 201 directions (193 by the FSD and 8 by the BD) were issued (over six years after the 2006 joint inspection).

3. According to the directions, the fire safety requirements for the premises included the provision of: (a) automatic cut-off devices for mechanical ventilating system and emergency lighting by both the OC and occupiers; and (b) protected lobby, sufficient and proper exit routes and fire shutters for the shopping arcade at level 3.

Source: *BD and FSD records*

Note: *The BD is responsible for preparing and seeking FSD's agreement on the boundary of Prescribed Commercial Premises in accordance with relevant provisions of the FS(CP)O.*

3.26 Besides Case 3, audit examination also revealed three other Prescribed Commercial Premises with similar delays (ranging from four to five years) in issuing directions allegedly due to the long time taken to determine their boundaries. While the BD has provided its staff with guidelines on determining a Prescribed Commercial Premises boundary, there is no laid-down time frame for completing the task. The BD needs to take measures to improve the timeliness in determining Prescribed Commercial Premises boundary.

Case 4

Target Composite Building under the 2008 large scale operation

1. According to the BD's laid-down guidelines, synchronised action should be taken as far as possible on target buildings with large scale operations to facilitate owners in carrying out works for complying with the Buildings Ordinance and FS(CP)O or FS(B)O in one go (see para. 3.18(a)). The subject Target Composite Building was included in the BD's 2008 large scale operation for tackling UBWs on external walls and in common staircases of selected buildings.

2. In February 2009, the BD and FSD conducted a joint inspection of the building. In early August 2009, the FSD completed its inspection report but the BD's inspection report was still outstanding. Meanwhile, orders to remove UBWs identified during the 2008 large scale operation were issued by the BD's Existing Buildings Division in mid-July 2009. From 2009 to 2012, the FSD made repeated enquiries about the BD's progress and was informed that a date for issuing directions had not yet been fixed.

3. After re-inspecting the building in July 2012 and January 2013, the BD inspection team completed its inspection report in late January 2013. After conducting its own re-inspection, the FSD sent out 36 directions (35 by the FSD and 1 by the BD) in February 2013 (four years after the 2009 joint inspection).

4. According to the directions, the fire safety requirements for the Target Composite Building included: (a) a sprinkler system/hose reel system for individual units; and (b) enclosures to cable and meters within the escape staircases with fire resistance period of not less than one hour for common areas.

Source: BD and FSD records

3.27 Besides Case 4, audit examination revealed five other Target Composite Buildings under the 2008 large scale operation (Case 9 in para. 5.5 was one of them) for which synchronised action had not been taken. In the event, there were delays of about four years each in issuing directions for the six Target Composite Buildings. The BD needs to take effective measures to ensure that the laid-down guidelines on taking synchronised action on target buildings also under large scale operations are complied with.

Audit recommendations

3.28 **Audit has *recommended* that the Director of Buildings and the Director of Fire Services should:**

(a) **take effective measures to improve the timeliness in issuing directions and to clear the backlog of directions overdue for issuing as soon as possible;**

(b) **review the current target of inspecting 1,150 Target Composite Buildings a year, to see if it is commensurate with the capacity in issuing directions within four months after inspections;**

(c) **based on the review result in (b) above, consider including the four-month time target for issuing directions in the CORs of the BD and FSD respectively; and**

(d) **strengthen controls over the timely preparation of inspection reports after joint inspections.**

3.29 **Audit has also *recommended* that:**

(a) **the Director of Fire Services should enhance the FSD's computer system for case management and monitoring the timeliness of its enforcement actions; and**

(b) **the Director of Buildings should take measures to:**

(i) **improve the timeliness in determining Prescribed Commercial Premises boundaries after joint inspections; and**

(ii) **ensure that the laid-down guidelines on taking synchronised action on target buildings also under large scale operations are complied with as far as possible.**

Response from the Administration

3.30 The Director of Buildings welcomes the audit recommendations in paragraphs 3.28 and 3.29(b). He has said that:

(a) over the years, because of the increasing complexity of the cases encountered, the mounting backlog arising from buildings inspected, manpower constraints and the need to synchronise with the BD's other large scale operations, the time target to issue directions within four months has become not achievable. To address this issue, the BD will, in conjunction with the FSD, conduct an overall review of the appropriate performance targets in the light of present situation, previous commitments made to the Legislative Council and available resources;

(b) for Target Composite Buildings with directions not yet issued in five years or more (see Table 6 in para. 3.20), in majority of the cases, major repair works had been carried out arising from the BD's other large scale operations. In order not to cause any repeated disturbances to the owners within a short period of time, the BD decided to defer its actions in issuing fire safety directions. The BD will continue to monitor the cases with a view to ensuring prompt issuance of directions; and

(c) the BD has spent much effort to synchronise the enforcement actions under the FS(CP)O and FS(B)O with those under the Buildings Ordinance in a timely manner. In 2008 and 2009, due to the large number of target buildings also subject to large scale operations under the Buildings Ordinance, the Fire Safety Section could not synchronise the enforcement actions for all of them (but only to the extent possible). With experience gained over the years, the percentage of synchronisation has been on a rising trend and up to 84% in 2013.

3.31 The Director of Fire Services agrees with the audit recommendations in paragraphs 3.28 and 3.29(a). He has said that:

(a) the four-month time target is an internal prescribed time frame for issuance of directions. Having regard to the present situation and available resources, the BD and FSD will:

  (i) carry out a review for improving the timeliness in issuing directions and clearing of the backlog of directions overdue;

  (ii) critically review the performance target of inspecting 1,150 Target Composite Buildings per year, and the four-month time target of issuing directions; and

  (iii) consider including the time target of issuing directions in the CORs after completing the review; and

(b) the FSD will enhance its computer system to strengthen the controls over the timely preparation of completion reports after joint inspection and for case management and monitoring the timeliness of the FSD's enforcement actions.

PART 4: ADMINISTRATION OF FIRE SAFETY DIRECTIONS ISSUED

4.1 This PART examines the FSD/BD's administration of fire safety directions issued under both the FS(CP)O and FS(B)O.

Procedures and guidelines

4.2 Generally, the BD and FSD allow owners/occupiers 12 months to comply with the fire safety directions. All directions should be closely monitored with a view to ensuring timely compliance and prompt follow-up actions in case of non-compliance.

4.3 In the 2004 review, Audit found that in many cases, extensions of time were granted repeatedly, and on occasions, the BD and FSD would take a rather lenient attitude in granting extensions of time. The review also revealed that the then prevailing procedures of the BD and FSD on taking enforcement actions against non-compliance cases were either on trial or in draft form. Audit had recommended that the BD and FSD should tighten up the procedures for granting extension of time and formalise the procedures on taking enforcement actions.

4.4 In follow-up of the audit recommendations, the BD and FSD have laid down the following guidelines:

(a) ***Before expiry of compliance period.*** The BD requires its staff to maintain a dialogue with the owners after the issuance of directions to effect compliance and offer assistance as necessary. Nearing the expiry of compliance period, they are required to contact owners by telephone or letters to remind compliance. A warning letter should be sent if there is still no sign of commencement of works when approaching the expiry of

the direction. The FSD requires its staff to carry out progress checks at intervals of nine months (Note 17). If progress is found to be unsatisfactory, an advisory letter would be issued to point out the possible consequences. FSD staff are also required to take initiative to render assistance to the owners;

(b) ***Upon expiry of compliance period/notification of completion of works.*** The BD requires its staff to carry out compliance checks, and report findings and recommendations to their supervisors. If there is no response or no sign of commencement of works after repeated warnings, prosecution action would be instigated. The FSD requires its staff to carry out compliance checks within ten working days for FS(B)O cases or 14 working days for FS(CP)O cases. They are required to take prosecution action against cases of non-compliance without reasonable excuse, after seeking the Department of Justice's advice in case of doubt; and

(c) ***Granting extension of time.*** The BD requires granting of extension of time to be substantiated (by documents such as OC meeting notes, tender documents and work schedules). Cases without substantiation but justified on individual merits would be endorsed by a Senior Building Surveyor. If an extension of time application has been rejected (such as an application with irrelevant grounds) and the direction is in default, prosecution would be taken. BD staff would also consider prosecution action against delaying tactics when it is detected that the applicant has no intention to carry out the required works. The FSD also requires granting of extension of time to be substantiated (by documents such as OC meeting notes and tender documents). Further extension of time will only be granted when there is evidence that improvement works are delayed by reasonable excuses or circumstances beyond the control of owners/occupiers. In the absence of documentary proof, legal action would be contemplated upon expiry of the compliance period.

Note 17: *Before December 2011, the frequency of progress check was three to four months. Due to heavy workload, the frequency has since been reduced to the present nine months.*

Follow-up actions on fire safety directions issued

Management information for monitoring follow-up actions

4.5 The BD has maintained a computerised database (containing key milestones such as dates of expiry of directions and details of extensions of time granted) for monitoring the follow-up actions on all directions issued. Based on the BD's database, Audit analysed the status of the directions issued (see Table 7) and the ages of the outstanding cases (see Table 8). However, the FSD's computer system did not support case monitoring and statistical analysis of directions issued because key information (such as dates of expiry of directions and details of extension of time granted) was not maintained in a centralised database (see Note to Table 7). The FSD should enhance its computer system for case management and monitoring the follow-up actions on directions issued (see para. 3.29(a)).

Table 7

Status of directions issued under the FS(CP)O and FS(B)O
(30 June 2013)

	Number of directions			
	Issued	**Complied with**	**Outstanding**	**Compliance period not yet expired**
BD	66,374 (100%)	28,186 (43%)	31,450 (47%)	6,738 (10%)
FSD	163,838 (100%)	94,225 (58%)	69,613 (Note) (42%)	
Overall	230,212 (100%)	122,411 (53%)	107,801 (47%)	

Source: *BD and FSD records*

Note: *The FSD case officers only reported the total number of directions not yet complied with, without a breakdown to show the number of directions with compliance periods not yet expired and the number of outstanding directions.*

Table 8

Ageing analysis of all BD's outstanding directions
(30 June 2013)

Outstanding duration (Note)	Number of directions	(%)
Less than a year	7,593	(24%)
1 year to less than 3 years	12,582	(40%)
3 years to less than 5 years	6,799	(22%)
5 years to less than 7 years	1,241	(4%)
7 years to less than 10 years	2,840	(9%)
10 years or more	395	(1%)
Total	31,450	(100%)
Average outstanding duration: 34 months		

Source: *Audit analysis of BD records*

Note: *The outstanding duration for each direction was counted from the date after the lapse of the compliance period.*

4.6 The large number of long outstanding directions (i.e. 31,450 directions outstanding for an average of 34 months) indicates a need to step up enforcement efforts. Audit examined 12 long outstanding cases (comprising 3 Prescribed Commercial Premises, 2 Specified Commercial Buildings and 7 Target Composite Buildings) and identified room for improvement in the following areas:

(a) granting extension of time (para. 4.7);

(b) progress check and compliance inspection (paras. 4.8 and 4.9); and

(c) follow-up actions on long outstanding directions (paras. 4.10 and 4.11).

Granting extension of time

4.7 In an examination of the extensions of time granted to owners of a Target Composite Building in November 2008 and December 2011, Audit noted that the grounds for some approved applications were that the formation of OC was in progress. Such application grounds were only relevant to directions issued to all owners for works in the common area. However, one of the owners was granted extensions of time twice for the works required in his unit (issued under separate direction) on the same grounds, which did not appear to be relevant. This case suggests a need for further tightening the control over the granting of extension of time.

Progress check and compliance inspection

4.8 Audit examination of two Prescribed Commercial Premises cases revealed inadequate progress checks on works required under directions in one case (Case 5) and late compliance inspection of completed works in another (Case 6).

Case 5

Inadequate progress check on required works

1. In November 2002, the BD and FSD issued a total of 89 directions to owners/occupiers of the subject Prescribed Commercial Premises (a shopping arcade) requiring various fire safety improvement works.

2. ***Inadequate progress check by FSD.*** From 2002 to 2009, the FSD approved extension of time for complying with the required works on six occasions and conducted 25 progress checks. Of the 81 directions issued by the FSD, 73 were complied with by June 2009. For each of the remaining eight directions, the FSD issued a warning letter in mid-August 2009. Subsequently, the FSD approved extensions of time on three occasions from late August 2009 to August 2012, but conducted only one progress check in August 2012. Thereafter, the FSD had not conducted any progress check or taken any enforcement action although the eight directions had not been complied with for 11 months (from the expiry of extension of time in August 2012 up to August 2013).

3. ***No record of progress check by BD.*** Of the eight directions issued by the BD, only one was complied with by October 2004. No extension of time was granted to the remaining seven directions which had been in default since November 2003. For over nine years (from November 2003 to August 2013), there was no record to show that progress check had been conducted (Note). Also, the BD had not taken any enforcement action (such as issuing warning letters).

Audit comments

4. While the FSD's laid-down procedures require progress check to be conducted at nine-month intervals (see para. 4.4(a)), in this case only one progress check was conducted during the three years from August 2009 to August 2012. The FSD needs to tighten control in this regard and consider taking further enforcement action on the eight directions which had not been complied with for 11 months.

Case 5 (Cont'd)

5. As for the BD, the absence of a stipulated frequency of progress check is unsatisfactory from control point of view. The BD also needs to step up enforcement action on long outstanding directions without reasonable excuses (such as the seven directions in this case which had remained outstanding for nine years).

Source: *BD and FSD records*

Note: *In October 2013, the BD informed Audit that inspection of the building in which the Prescribed Commercial Premises were situated, had been conducted. Due to heavy workload, observations in respect of the Prescribed Commercial Premises were not documented.*

Case 6

Late compliance inspection of completed works

1. In August 2001, the BD and FSD issued a total of four directions to the owner and occupier of the subject Prescribed Commercial Premises (a department store) requiring various fire safety improvement works.

2. ***Late inspection by BD.*** For the direction issued by the BD to the owner, extensions of time for complying with the required works were granted on six occasions up to February 2005. In November 2006, the owner notified the BD that the required works had been completed. In September 2007, the BD responded to the owner that it would conduct inspection to verify the compliance of the direction. However, the BD only conducted three compliance inspections from May to November 2010 (almost four years after the owner's notification) when it was found that the completed works were not fully acceptable (i.e. the smoke vents of the basement floor were blocked by false ceilings). In November 2010, the BD required the owner to carry out remedial works. However, further compliance inspections were only carried out in August 2013 (after more than 2 years). The direction was then discharged.

3. ***Need for review due to change of occupier.*** Of the three directions issued by the FSD, one for the owner was complied with by September 2009. The remaining two directions for the occupier were withdrawn in November 2004 after the FSD's inspection revealed that the occupier had moved out and the premises were undergoing renovation works. While another department store started business in the same premises in 2007, up to August 2013, the FSD had not reviewed its fire safety provisions to see if new directions should be issued.

Audit comments

4. The delays in carrying out compliance inspection of completed works (4 years) and remedial works (over 2 years) in this case indicate a need to tighten the BD's control over the laid-down procedures on compliance inspection (see para. 4.4(b)). For the FSD, there is a need to review the fire safety provisions of the existing Prescribed Commercial Premises to see if new directions should be issued.

Source: BD and FSD records

4.9 Besides Case 6, Audit also noted other instances of long time taken in conducting compliance inspection by the BD, as follows:

(a) since 2010, the BD has engaged external consultants to assist in conducting compliance inspections of completed works in Specified Commercial Buildings/Target Composite Buildings. According to the consultancy agreements, if the consultant cannot gain access to a building for carrying out compliance inspection, he shall make two more attempts, one of which must be made outside office hours. After the third unsuccessful attempt, the BD would take up the compliance inspection. Audit found that as at June 2013, the BD had not conducted compliance inspections on six Target Composite Building cases (7 to 13 months after they were taken over from consultants);

(b) in September 2011, an owner of a Specified Commercial Building was convicted for failing to comply with the BD's direction (which was issued in 2003) and fined $2,000. However, compliance inspections were only conducted in August 2013 (2 years later). The required item was found rectified and the direction was then discharged; and

(c) in May 2004, three owners of office units in a Specified Commercial Building were convicted for failing to comply with the BD's directions (which were issued in 2001) and each fined $8,000. The court also issued compliance orders to the owners requiring them to complete the outstanding works by November 2004. However, the BD only conducted compliance inspection in October 2005 when it was found that the owners had sold their units in June 2005 without complying with the court orders. As at August 2013, the BD had not taken follow-up action on the default court orders nor issued directions to the new owners of the office units.

Follow-up actions on long outstanding directions

4.10 Notwithstanding the large number of long outstanding directions (i.e. 31,450 directions that had remained outstanding for an average of 34 months — see Table 8 in para. 4.5), the BD had only instigated prosecution actions on 105 cases since 2000. As regards the FSD, the 2004 audit review revealed that there were 171 prosecution cases from 2000 to 2003 (four years). However, this audit review found that there were only 86 prosecution cases from 2004 to August 2013 (almost ten years), suggesting that the FSD had taken even fewer prosecution actions.

4.11 To demonstrate the Government's commitment to improving the fire safety provisions of the target buildings/premises and to serve as deterrence, prosecution actions should be promptly instigated in warranted cases. Besides Case 5 in paragraph 4.8, Case 7 below is another example showing that more stringent enforcement action is warranted for long outstanding directions without reasonable excuses.

Case 7

Long outstanding directions without reasonable excuses

1. In December 2000, the BD and FSD issued a total of three directions to the owner and occupier of the subject Prescribed Commercial Premises (a department store) requiring various fire safety improvement works.

2. ***Action by FSD.*** While the direction issued by the FSD to the owner was complied with by May 2004, the direction issued to the occupier had been in default since August 2004 (the date of expiry of the fifth extension of time granted). However, enforcement action had not been taken for nine years (from August 2004 to July 2013).

3. ***Action by BD.*** The direction issued by the BD to the owner had been in default since December 2001 (the date of expiry of the direction as no extension of time had been granted). The BD only issued two warnings (in November 2001 and May 2003). While the owner did not respond to the repeated warnings, further enforcement action had not been taken for ten years (from May 2003 to July 2013).

Source: BD and FSD records

Audit recommendations

4.12 **Audit has *recommended* that the Director of Buildings should:**

(a) **consider stipulating the frequency of progress check on works required under the FS(CP)O and FS(B)O;**

(b) **tighten controls to ensure that BD staff strictly follow the laid-down procedures on:**

(i) **granting extension of time for complying with fire safety directions based on relevant and substantiated grounds; and**

(ii) **conducting compliance inspections of completed works in a timely manner (including those cases taken over from consultants as mentioned in para. 4.9(a));**

(c) **step up enforcement actions against non-compliant owners/occupiers by requiring BD staff to:**

(i) **promptly issue warning letters upon detection of non-compliance with the directions, and closely monitor the response from owners/occupiers for considering the need for further enforcement actions; and**

(ii) **instigate prosecution actions on long outstanding cases without reasonable excuses (such as Case 5 in para. 4.8 and Case 7 in para. 4.11); and**

(d) **closely monitor the convicted owners' compliance with outstanding directions and court orders, and take necessary actions accordingly.**

4.13 **Audit has *recommended* that the Director of Fire Services should:**

(a) **tighten controls to ensure that the stipulated frequency of progress check is strictly complied with;**

(b) **remind FSD staff to review the need for issuing new directions for any change in the occupier of Prescribed Commercial Premises (such as Case 6 in para. 4.8); and**

(c) **step up enforcement actions against non-compliant owners/occupiers by requiring FSD staff to:**

(i) **promptly issue warning letters upon detection of non-compliance with the directions, and closely monitor the response from owners/occupiers for considering the need for further enforcement actions; and**

(ii) **instigate prosecution actions on long outstanding cases without reasonable excuses.**

Response from the Administration

4.14 The Director of Buildings agrees with the audit recommendations in paragraph 4.12. He has said that:

(a) the BD will remind staff to strictly adhere to the guidelines in considering application for extension of time;

(b) the target buildings under the FS(CP)O and FS(B)O had complied with the fire safety standards at the time of construction. The objective of the two Ordinances is to improve their fire safety measures to modern standards. Building owners may have various practical difficulties (e.g. site constraints) to carry out the required improvement works. BD staff would take a flexible and pragmatic approach and offer assistance so as to facilitate the building owners to comply with the directions. Prosecution action would only be considered as a last resort. That said, the BD agrees that there is a need to step up those prosecution actions on long outstanding cases without reasonable excuses; and

(c) the BD will, in collaboration with the FSD, conduct an overall review of the enforcement actions, including progress checks, compliance inspections, issue of warning letters, prosecution actions, etc., to improve the overall situation of compliance.

4.15 The Director of Fire Services agrees with the audit recommendations in paragraph 4.13. He has said that:

(a) the FSD will enhance its computer system to facilitate case management and ensure that the stipulated frequency of progress check is strictly complied with; and

(b) all case officers of the FSD will be reminded to:

(i) review the need for issuing new direction(s) without delay for any change in the occupancy of Prescribed Commercial Premises; and

(ii) strictly observe the FSD procedural instructions on enforcement actions against non-compliant owners/occupiers. Besides, supervising officers concerned will also be reminded to tighten the relevant monitoring work.

PART 5: FOLLOW-UP ACTIONS ON UNAUTHORISED BUILDING WORKS FOUND DURING INSPECTIONS

5.1 This PART examines the BD's follow-up actions on UBWs found during inspections of target buildings under the FS(CP)O and FS(B)O.

Enforcement tools and guidelines

5.2 ***Enforcement tools.*** At present, all building works are subject to the control of the Buildings Ordinance. All building works, except for the designated minor works and exempted works as defined under the Buildings Ordinance (Note 18), require prior approval and consent of the Building Authority before such works may commence. Otherwise, they will be regarded as UBWs. UBWs include those associated with sub-divided flats, the safety problems of which have attracted public attention (Note 19). All UBWs (including those associated with sub-divided flats) are subject to the following enforcement actions:

(a) the BD will issue a statutory order under section 24 of the Buildings Ordinance requiring the owner concerned to remove the UBWs within a specified period (usually 60 days), and will register the order in the Land Registry (Note 20). If the property is mortgaged, the financial institution concerned will be notified; and

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Note 18: *Though exempted works and minor works do not require prior approval and consent of the Building Authority, they will still be regarded as UBWs if they are carried out in contravention of the regulations under the Buildings Ordinance (e.g. not up to the standards stipulated in the regulations).*

Note 19: *In recent years, the Government has adopted a series of measures to specifically address the building safety issues of sub-divided flats (see Appendix F for details).*

Note 20: *Before April 2011, it was the BD's practice to register orders issued under large scale operations in Land Registry after compliance inspections (which were carried out immediately upon expiry of orders). With effect from April 2011, all orders (irrespective whether they are issued under large scale operations or not) are required to be registered in the Land Registry upon issuance.*

(b) if the owner, without reasonable excuse, fails to comply with the order, the BD may:

(i) instigate prosecution action against the owner for the non-compliance. Upon conviction, there may be a maximum penalty of one year's imprisonment and a maximum fine of $200,000. For continuing offences, there is a further daily fine of $20,000; and/or

(ii) arrange for the government contractor to carry out the required works and then recover the cost of works plus a supervision charge and a surcharge from the owner.

Enforcement guidelines

5.3 As UBWs may be found during inspections of target buildings under the FS(CP)O and FS(B)O, the BD has laid down the following guidelines for staff of the Fire Safety Section:

(a) for UBWs found within the actionable areas of the FS(CP)O and FS(B)O (Note 21) which affect fire safety, the requirements for their removal might be included in the directions. However, for UBWs having imminent danger to fire safety, an order under section 24 of the Buildings Ordinance could be issued to rectify the situation more promptly (Note 22); and

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Note 21: *Actionable areas refer to all the internal areas of a Prescribed Commercial Premises, and the means of escape, internal areas, external wall and common parts of a Specified Commercial Building. The actionable areas of the non-domestic portion of a Target Composite Building are similar to those of a Specified Commercial Building (i.e. all the means of escape, internal areas, external wall and common parts of a Specified Commercial Building) while those of the domestic portion of a Target Composite Building and Target Domestic Building include the exit staircases and the ground floor exit leading therefrom.*

Note 22: *60 days are usually allowed for compliance of an order issued under the Buildings Ordinance, and 12 months for a direction issued under the FS(CP)O or FS(B)O. In case of non-compliance with an order, the Buildings Ordinance empowers the BD to carry out the required remedial works and recover the cost from the owner concerned. Such default power is however not available under the FS(CP)O and FS(B)O.*

(b) UBWs not within the scope of the FS(CP)O and FS(B)O should be referred to the Existing Buildings Division for taking necessary action. Nevertheless, the Fire Safety Section may take enforcement action on isolated incidents in order to minimise referral.

5.4 For the Existing Buildings Division, the BD's guidelines stipulate that reports on UBWs referred from other BD's sections (including the Fire Safety Section) should be screened by the responsible team leader to see if they are actionable cases (i.e. cases with imminent danger and undetermined cases due to insufficient information). For an actionable case, an inspection of the UBWs shall be carried out to determine the priority and enforcement actions required within 50 days after receipt of the referral. For cases assessed not having imminent danger, the guidelines have not stipulated any time frame for taking action.

Case studies

5.5 During inspections of the target buildings/premises for the 20 delayed cases of issuing fire safety directions referred to in paragraph 3.24, the Fire Safety Section found UBWs and suspected sub-divided flats in 7 cases. Audit examination of these 7 cases revealed that in 5 cases, follow-up actions on the UBWs and sub-divided flats had not been promptly taken. Examples are described in Cases 8 and 9 below.

Case 8

Follow-up on UBWs by the Fire Safety Section and Existing Buildings Division

1. The subject Target Composite Building was included in the Fire Safety Section's 2011 inspection programme under the FS(B)O.

2. The BD's records show the following:

(a) ***Long time taken to make referral.*** In a joint inspection with the FSD in June 2011, the Fire Safety Section identified UBWs and a suspected sub-divided flat in the building (besides its findings relating to the FS(B)O). The Section considered that the UBWs and the suspected sub-divided flat might affect the means of escape of the building in the event of fire. However, the Section only referred its findings on the sub-divided flat and UBWs to the Existing Buildings Division for action under the Buildings Ordinance in April and May 2012 respectively (i.e. some 10 months afterwards); and

(b) ***Long time taken to follow up on referral.*** After receiving the Fire Safety Section's referrals, the Existing Buildings Division:

(i) appointed a consultant to follow up on the UBWs. An advisory letter and a statutory order were issued to the owners concerned in August and October 2012 respectively; and

(ii) reviewed the information of the suspected sub-divided flat provided by the Fire Safety Section. The Existing Buildings Division's assessment was that the case did not have imminent danger, but should be considered for inclusion in the coming large scale operation for tackling sub-divided flats (Note). However, a decision was only made in September 2013 (i.e. 17 months later) that the subject building would be included in the 2013 large scale operation for tackling sub-divided flats.

Case 8 (Cont'd)

Audit comments

3. There was no record to show the reason why:

(a) it had taken some 10 months before the Fire Safety Section referred the UBWs (including those associated with a sub-divided flat) found during inspection to the Existing Buildings Division; and

(b) the Existing Buildings Division only decided to include the subject building in the 2013 large scale operation for tackling sub-divided flats in September 2013 (17 months after receipt of the referral).

4. The BD needs to take measures to ensure prompt follow-up action on UBWs and sub-divided flats found during its inspection.

Source: *BD and FSD records*

Note: *Since April 2011, the BD has launched large scale operations to tackle UBWs associated with sub-divided flats (see para. B of Appendix F).*

Case 9

Follow-up on UBWs by the Existing Buildings Division

1. The subject Target Composite Building was included in the Existing Buildings Division's 2008 large scale operation for tackling UBWs on external walls and in common staircases. The building was also included in the Fire Safety Section's 2008 inspection programme under the FS(B)O.

2. ***Inspections findings.*** The building was inspected by the Existing Buildings Division in June 2008, and jointly by the Fire Safety Section and the FSD in September 2008. Besides its findings relating to FS(B)O, the Fire Safety Section also identified UBWs which affected the means of escape of the building, and a suspected sub-divided flat. In November 2008, the Section informed the Existing Buildings Division by e-mail of its findings on the UBWs and the suspected sub-divided flat.

3. ***Inadequate actions on first referral.*** In July 2009, the Existing Buildings Division issued 16 statutory orders for the building covering the UBWs identified in its 2008 large scale operation and also those referred from the Fire Safety Section. Up to June 2013 (four years later), all 16 orders remained outstanding, but no enforcement action had been taken. Moreover, no action had been taken on the suspected sub-divided flat mentioned in the Fire Safety Section's e-mail of 2008.

4. ***Re-inspection findings.*** In September 2012, the Fire Safety Section inspected the building again (Note) and identified new UBWs and those associated with a sub-divided flat. In October 2012, it informed the Existing Buildings Division of its latest findings for follow-up action.

5. ***Long time taken to follow up on second referral.*** In December 2012, the Existing Buildings Division instructed a consultant to inspect the sub-divided flat. However, only in September 2013 (i.e. about 11 months after the receipt of the referral) did the Existing Buildings Division complete the inspection on the sub-divided flat and issue a statutory order to the owner.

Case 9 (Cont'd)

Audit comments

6. There was no record to show the reason why the Existing Buildings Division:

(a) did not take any action on the suspected sub-divided flat after the receipt of the Fire Safety Section's e-mail in 2008;

(b) did not take any enforcement action on the 16 statutory orders which had remained outstanding since 2009; and

(c) took some 11 months to complete the inspection on the sub-divided flat referred by the Fire Safety Section and issue a statutory order to the owner.

7. The BD needs to tighten controls to ensure that UBWs and sub-divided flats with fire hazards are promptly followed up.

Source: *BD and FSD records*

Note: *In 2009, the Fire Safety Section did not take action to synchronise the issue of directions under the FS(B)O with the issue of orders by the Existing Buildings Division (see para. 3.27). In 2012 (due to the lapse of 4 years since the 2008 inspection), the Fire Safety Section had to re-inspect the building before issuing the directions.*

5.6 ***Enforcement guidelines.*** Audit examination has revealed that there is room for improvement in the following areas:

(a) the guidelines have not specified a time frame within which:

(i) the Fire Safety Section should issue orders under the Buildings Ordinance for the fire-safety-related UBWs found or refer such findings to the Existing Buildings Division for action. Case 8 and one other case examined by Audit (see para. 5.5) showed that the Fire Safety Section took 10 and 11 months respectively to refer fire-safety-related UBWs found to the Existing Buildings Division for action; and

(ii) the Existing Buildings Division should follow up referred cases not having imminent danger (such as determining whether to include these cases in its large scale operation on sub-divided flats) as soon as possible. Case 8 and one other case examined by Audit showed that it had taken some 17 and 19 months respectively to do so; and

(b) Case 9 showed that the Existing Buildings Division had not carried out follow-up inspections on the UBWs/sub-divided flats with imminent danger referred by the Fire Safety Section within 50 days as laid down in the guidelines (see para. 5.4). In another case examined by Audit, it had taken 64 days to carry out the inspection.

5.7 ***Use of enforcement tools.*** Audit examination has revealed that as at 30 September 2013:

(a) all the 7 cases examined by Audit had statutory orders not yet complied with, but the BD had not registered the outstanding orders in the Land Registry in 3 of them (see para. 5.2(a)). The orders in these 3 cases were issued in 2009; and

(b) ageing analysis of the outstanding orders showed that in 4 cases (including Case 9), the orders had remained outstanding for more than 4 years. However, the BD had not arranged for the government contractor to carry out rectification works or instigated prosecution action in all 4 cases. There is a need to make effective use of the available enforcement tools to expedite the compliance with statutory orders for the early rectification of the fire-safety-related UBWs/sub-divided flats.

Audit recommendations

5.8 **Audit has *recommended* that the Director of Buildings should:**

(a) **take measures to ensure that UBWs/sub-divided flats found during inspections under the FS(CP)O and FS(B)O are promptly followed up, particularly those with fire hazards. Such measures may include:**

(i) **stipulating a time frame within which the Fire Safety Section staff should issue statutory orders for fire-safety-related UBWs/sub-divided flats found or refer such findings to the Existing Buildings Division for action;**

(ii) **stipulating a time frame within which the Existing Buildings Division should determine whether to include buildings found with sub-divided flats in its large scale operations for tackling sub-divided flats; and**

(iii) **reminding the Existing Buildings Division staff to carry out inspection on actionable cases within 50 days as laid down in the BD's guidelines; and**

(b) **make effective use of all available enforcement tools to expedite the compliance with statutory orders for early rectification of fire-safety-related UBWs/sub-divided flats.**

Response from the Administration

5.9 The Director of Buildings agrees with the audit recommendations. He has said that:

(a) the BD will review the treatment of UBWs, including those associated with sub-divided flats, identified during inspections under the FS(CP)O and FS(B)O to ensure timely follow-up. Any time frame for issuing statutory orders must be considered in the light of present situation and available resources of the Fire Safety Section;

(b) the BD will review the procedures on inclusion of buildings with sub-divided flats in the large scale operation. In order to make the most effective use of the available resources, there is the need for considering priorities in inclusion of buildings in the large scale operation for tackling sub-divided flats;

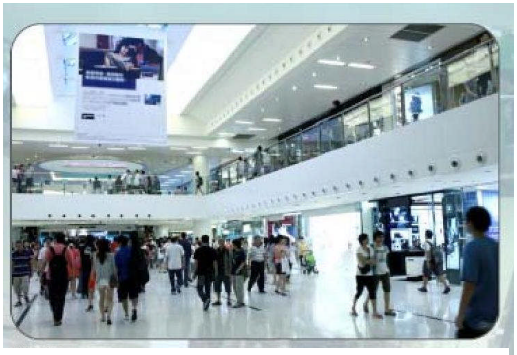
(c) the BD will closely monitor those cases referred from Fire Safety Section to ensure timely completion of necessary inspections; and

(d) to make the most effective use of available resources, enforcement action on the outstanding orders would be carried out in an orderly manner. Priorities will be given to those cases with obvious hazard or imminent danger to life and property.

Appendix A
(para. 1.3 refers)

Illustrations of Prescribed Commercial Premises

Bank (other than merchant bank)



Shopping arcade

Off-course betting centre

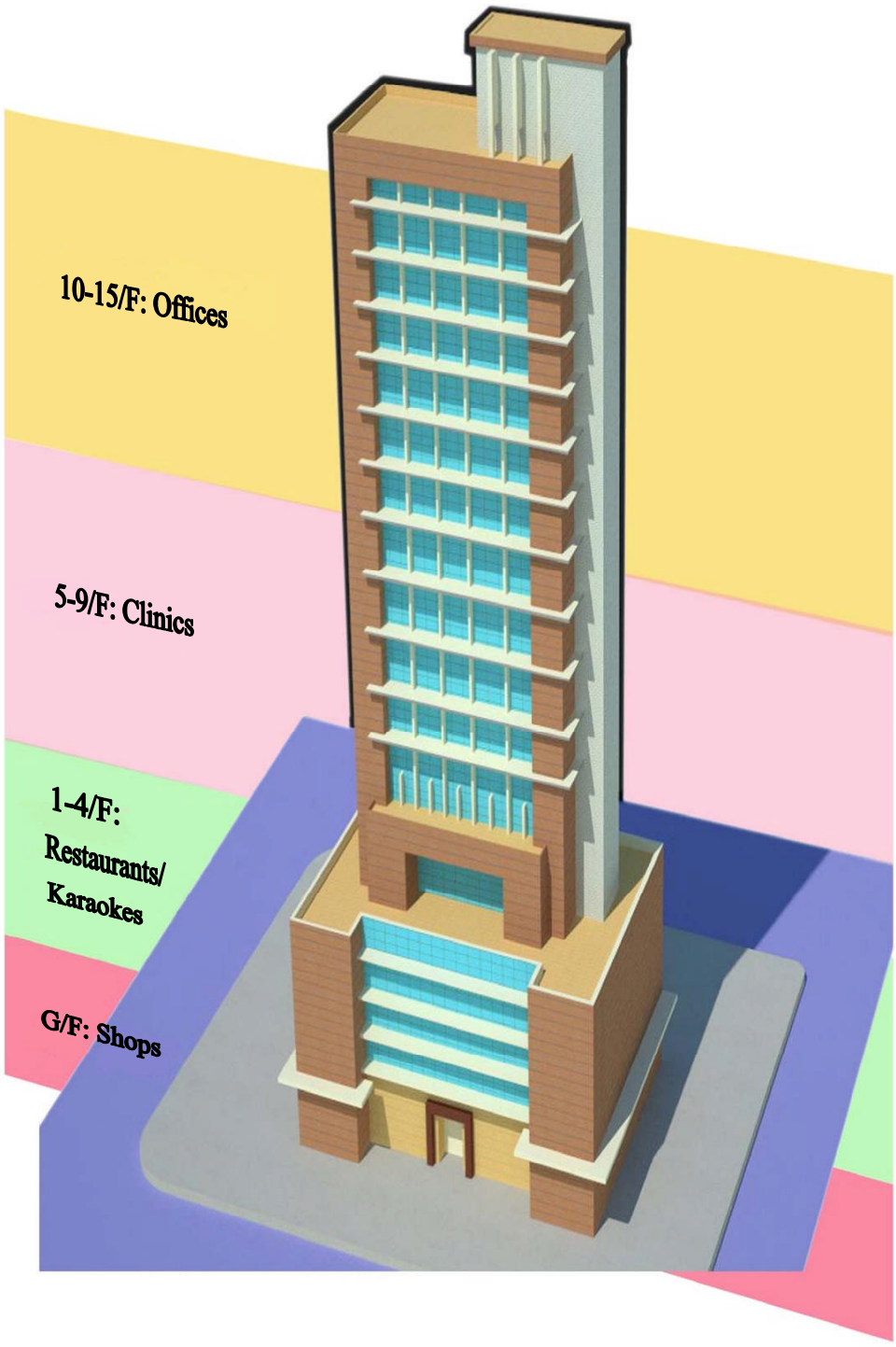
Jewelry or goldsmith's business on premises that have security area

Supermarket, hypermarket or department store

Source: BD records

Appendix B
(para. 1.4 refers)

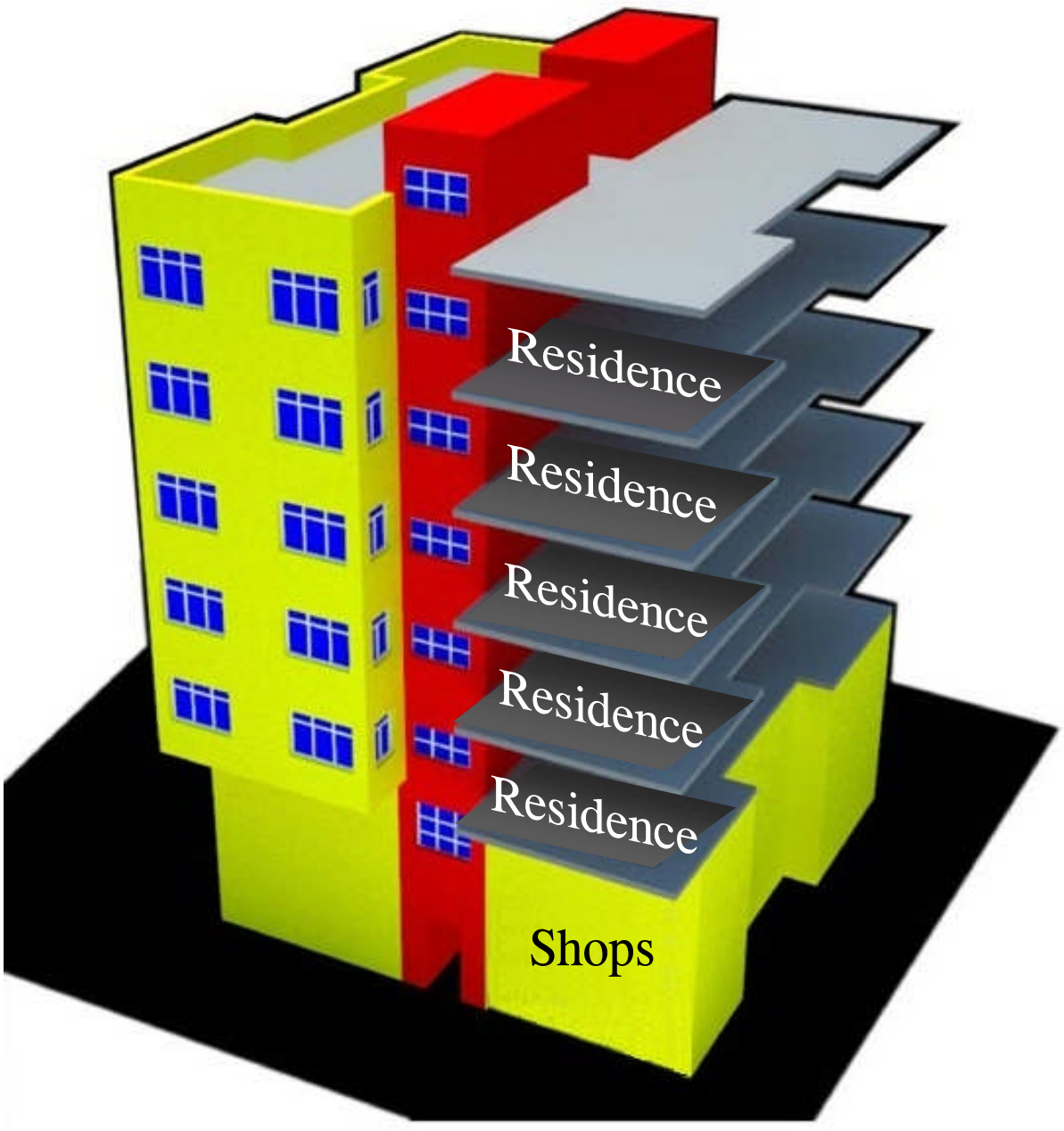
An illustration of a Specified Commercial Building



Source: *BD records*

Appendix C
(para. 1.5 refers)

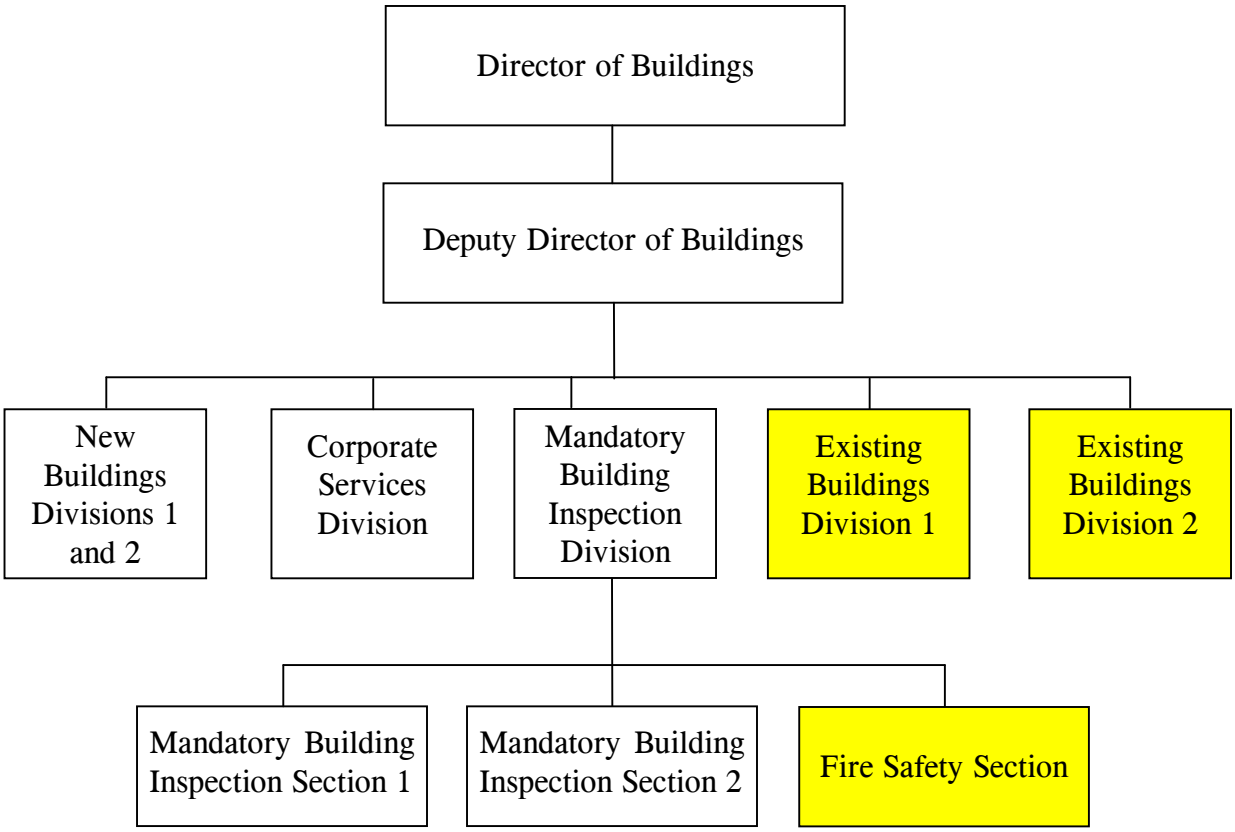
An illustration of a Target Composite Building



Source: *BD records*

Appendix D
(para. 1.8 refers)

Buildings Department
Organisation chart (extract)
(30 September 2013)

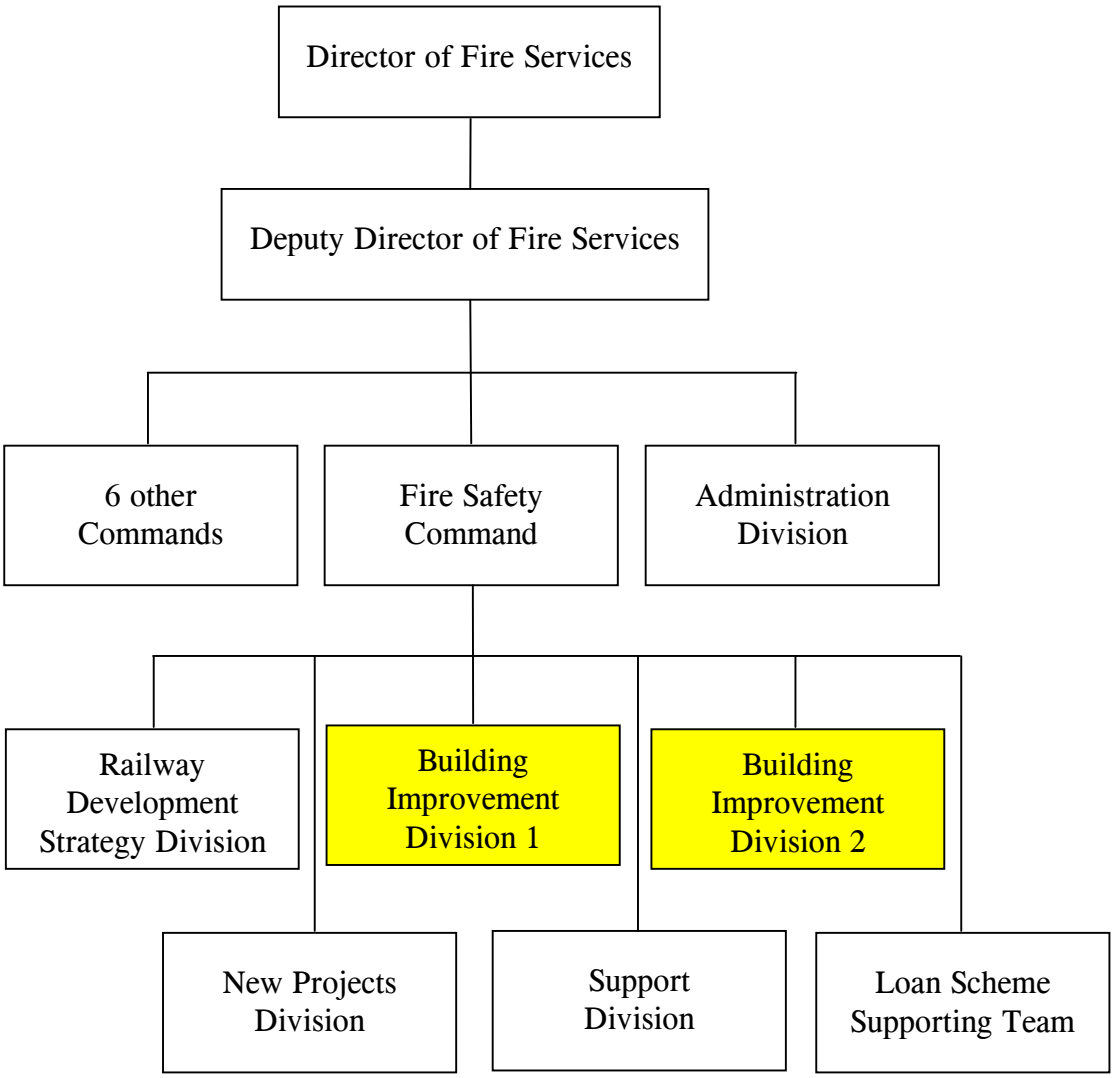


Source: *BD records*

Remarks: *The Existing Buildings Division is responsible for tackling UBWs and the Fire Safety Section is responsible for enforcing the FS(CP)O and FS(B)O.*

Appendix E
(para. 1.8 refers)

Fire Services Department
Organisation chart (extract)
(30 September 2013)



Source: *FSD records*

Remarks: *The Building Improvement Divisions are responsible for enforcing the FS(CP)O and FS(B)O.*

Appendix F
(Note 19 to para. 5.2 and
Note to Case 8 in para. 5.5 refer)

Measures to address building safety issues of sub-divided flats

(A) **Legislation**

The Building (Minor Works) (Amendment) Regulation 2012, which came into effect on 3 October 2012, has included building works associated with sub-divided flats under the Minor Works Control System, so that these works would be required to be carried out by qualified professionals and contractors. Legislation to provide for application to the court for a warrant under the Buildings Ordinance for entry into premises to facilitate the BD's enforcement actions was enacted in July 2012. This is particularly useful for inspections relating to sub-divided flats.

(B) **Enforcement**

Apart from carrying out investigation in response to reports on sub-divided flats from members of the public and taking appropriate enforcement actions, the BD has since April 2011 launched large scale operations aimed at rectifying irregularities of building works associated with sub-divided flats. In 2012, the BD also extended the scope of target buildings of the large scale operations against sub-divided flats to cover industrial buildings.

(C) **Publicity**

The BD has published a number of pamphlets providing guidance to the public on how to ensure building safety in sub-divided flats and the need to prevent UBWs associated with sub-divided flats. The BD has also produced announcement in the public interests and publications on Minor Works Control System to encourage owners to arrange minor works and alteration works to be carried out by qualified professionals and contractors.

Source: BD records

Acronyms and abbreviations

Audit	Audit Commission
BD	Buildings Department
CORs	Controlling Officer's Reports
FS(B)O	Fire Safety (Buildings) Ordinance
FS(CP)O	Fire Safety (Commercial Premises) Ordinance
FSD	Fire Services Department
HAD	Home Affairs Department
OCs	Owners' Corporations
UBWs	Unauthorised building works

CHAPTER 8

Drainage Services Department

Sewage Services Charging Scheme

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

SEWAGE SERVICES CHARGING SCHEME

Contents

SEWAGE SERVICES CHARGING SCHEME

Executive Summary

1. Hong Kong has established an extensive public sewerage system, which covers areas inhabited by 93% of the population. Every day, 2.7 million cubic metres (m^3) of sewage produced from residential, commercial and industrial premises is disposed of through the public sewerage system. Under the policy directives of the Environment Bureau, the Drainage Services Department (DSD) is responsible for managing the public sewerage system for the collection, treatment and disposal of sewage.

2. In April 1995, the Sewage Services Charging Scheme (SSCS) was introduced, under which a water consumer whose premises are connected to a public sewer needs to pay a sewage charge (SC), and a trade effluent surcharge (TES) if he operates one of the 27 designated trades. The Sewage Services Branch (SS Branch) of the DSD is responsible for administrating the SSCS. Furthermore, the Water Supplies Department (WSD) collects SC and TES on behalf of the DSD, which are included in water bills issued to water consumers. As of 31 March 2013, there were 2.79 million water accounts, of which 2.61 million were SC accounts (of which 22,000 were also TES accounts) and 180,000 were non-SC accounts. In 2012-13, the DSD collected $776 million of SC and $207 million of TES. In 2011-12, the Sewage Services Operating Accounts prepared by the DSD recorded an operating deficit of $536 million. The Audit Commission (Audit) has recently conducted a review of the SSCS with a view to identifying areas for improvement.

Recovery of sewage services operating costs

3. In launching the SSCS in April 1995, the SC rate was set at $1.2 per m^3 of water supplied, and the TES rates were set ranging from $0.11 to $5.98 per m^3 of water supplied, depending on the average sewage pollution strength of individual TES trades. In May 2007, the Legislative Council (LegCo) approved increases in the SC rate by 9.3% per annum from April 2008 to April 2017 (the ten-year SC-rate increment scheme). Furthermore, the TES rates for individual trades were revised in August 2008 and August 2009. On the expenditure side, the DSD has projected

that the operating costs and operating deficits would increase in the coming years because of the completion and launch of additional sewage treatment facilities, to be offset somewhat by increased operational efficiency and certain cost savings (paras. 2.5 to 2.10).

4. ***Target cost recovery rates not achieved.*** In May 2008, the Chief Executive-in-Council endorsed that: (a) the projected operating cost recovery rate for SC would be around 70% after implementing the ten-year SC-rate increment scheme by 2017-18; and (b) the Government aimed to achieve a 100% cost recovery rate for TES by 2009-10. However, Audit notes that the DSD's SC cost recovery rate of 57% in 2011-12 is projected to improve to 60% in 2017-18, which will fall short of the Government's target of 70%, and the TES cost recovery rate of 95% in 2011-12 is projected to deteriorate to 62% in 2017-18, which will also fall short of the Government's target of 100% (paras. 2.12 and 2.14).

Collection of sewage charges

5. ***Omissions and long time taken in levying SC on premises***. SC is chargeable on all water accounts except those of premises located in unsewered areas or developments. For the purpose of levying SC, all water accounts are classified as either SC chargeable or non-SC chargeable. Upon receipt of an application for a change of the account holder of an existing non-SC account, the DSD will check related information in the WSD's Customer Care and Billing System (CCBS) to determine whether the non-SC status of the account address has been changed. The DSD will conduct investigations and take necessary SC recovery action if the address falls within the sewered areas (paras. 3.3, 3.7 and 3.8).

6. Audit examination revealed two cases where the DSD had taken a long time before identifying the omissions in levying SC on premises which had been connected to public sewers. In one case, the SS Branch had not promptly updated the sewer connection information of 18 households in Estate A because they had different address formats. In another case, since noting a potential SC-omission case in Estate B in March 2011, the SS Branch had taken more than two years to identify 215 SC-omission cases in the Estate. This had resulted in a loss of Government revenue (para. 3.9).

7. ***Inadequate checking of SC-omission cases.*** In 2012-13, of the 8,944 new non-SC accounts, 1,868 (21%) accounts were suspected SC-omission cases. However, Audit noted that, up to July 2013, of the 1,868 suspected SC-omission cases, the SS Branch had only selected and completed investigation of 55 cases (3%). Of these 55 cases, 40 (73%) were found to be SC chargeable. After conducting investigations of non-SC accounts in the nearby areas of the 40 cases, the DSD found additional 377 non-SC accounts which were SC chargeable. The DSD needs to task the SS Branch to carry out a one-off exercise to examine the SC status of all the non-SC accounts (paras. 3.10 to 3.12).

Collection of trade effluent surcharges

8. In applying for a new non-domestic water account, an applicant is required to choose 1 of 102 business classifications that corresponds most precisely to the account category at the service address, and fill in the business classification and its code in the application form. Of the 102 business classifications, 30 are chargeable to TES. Based on the classifications indicated by the applicants, TES is levied on pertinent water accounts through the CCBS (para. 4.2).

9. ***Misclassifications leading to omissions in levying TES.*** The DSD is aware of the fact that some TES traders have not properly filled in their business classifications when applying for water accounts, resulting in their accounts being incorrectly treated as non-TES accounts. With a view to identifying these TES-omission cases, the DSD has since May 2005 requested the Food and Environmental Hygiene Department (FEHD) to periodically provide it with information of the newly licensed food premises for it to review and ascertain whether TES has been levied on the water accounts of pertinent premises. Furthermore, the DSD has since 2001-02 requested the WSD to provide it with information of non-TES trade accounts with high water consumption to determine whether they are chargeable to TES (paras. 4.4, 4.6 and 4.10).

10. ***Self-classification mechanism not effective.*** In the three years from 2010-11 to 2012-13, the DSD had taken action to verify 3,155 non-TES accounts of newly licensed food premises. The results revealed that 72% of these accounts were in fact TES chargeable, and the DSD took action to recover TES of $10.5 million from the pertinent traders. A high percentage of TES-omission cases may be the result of (a) TES traders' lack of knowledge of the TES requirements; and

(b) the lack of deterrence on TES traders who knowingly provide incorrect information on their business classifications because there is no related penalty clause provided in the Sewage Services Ordinance. In view of the high percentage of TES-omission cases, the DSD needs to, in collaboration with the WSD, remind TES traders of the need to provide correct business-classification information. Amendments to the Sewage Services Ordinance may also be required to provide the appropriate penalty clauses (paras. 4.8, 4.9, 4.15 and 4.16).

11. ***Insufficient guidance on classifying TES-related businesses.*** The DSD mainly relies on the business-classification information provided by TES traders to levy TES on the pertinent water accounts. However, Audit notes that the WSD has not clearly stated in the water-account application form that the business classification information will be used for determining whether a trader will be charged TES. Furthermore, the 30 TES-related business classifications are not explicitly made known in the application form. In the circumstance, a TES trader may find more than one business classification that matches his business and may select a non-TES-related classification in the application form, resulting in an omission in levying TES (para. 4.17).

12. ***DSD's examination not covering food premises licensed before 2005.*** Based on the FEHD's records, as of June 2013, there were 7,692 licensed food premises which had been in operation before May 2005. However, most of these 7,692 food premises have not been examined by the DSD regarding the correctness of their business classifications for TES purposes. Audit examination of 70 such food premises revealed that 9 (13%) premises originally registered with non-TES trade accounts were in fact chargeable to TES (paras. 4.19 and 4.20).

13. ***TES not levied on some unlicensed food premises.*** In the three years from 2010 to 2012, there were 7,961 convicted cases of premises operating as unlicensed restaurants or food factories. However, the DSD had not requested the FEHD to provide it with the pertinent information for checking and identifying any TES-omission cases (paras. 4.22 and 4.23).

14. ***TES not levied on catering services operated by some private clubs.*** As of June 2013, there were 672 private clubs licensed by the Home Affairs Department. These clubs serving food to their members and guests are exempt from the requirement of obtaining a restaurant licence from the FEHD. However,

the DSD had not conducted investigations of private clubs having non-TES accounts with a view to identifying any TES-omission cases. Audit examination of 50 licensed private clubs revealed that 17 clubs had not been levied TES, and 11 (65%) of these 17 clubs were providing catering services and should be chargeable to TES (paras. 4.24 and 4.26).

Audit recommendations

15. **Audit recommendations are provided in the respective sections of this Audit Report. This Executive Summary only highlights the key recommendations. Audit has *recommended* that the Director of Drainage Services should:**

Recovery of sewage services operating costs

(a) **conduct a review to ascertain the reasons for not achieving the Government's cost recovery targets on SC and TES, and devise strategies and action plans to address the issue (para. 2.16);**

Collection of sewage charges

(b) **take necessary measures with a view to preventing recurrence of SC omissions and any delay in taking SC recovery actions (para. 3.18(b) and (c));**

(c) **take necessary measures with a view to preventing recurrence of cases of loss of Government revenue owing to any delay in taking SC recovery action, with due regard to the six-year debt-recovery limitation period (para. 3.18(d));**

(d) **task the SS Branch to carry out a one-off exercise to examine the SC status of all non-SC accounts (para. 3.18(f));**

Collection of trade effluent surcharges

(e) **enhance publicity efforts on TES traders to remind them of the need to provide correct business-classification information to the DSD and the WSD (para. 4.41(a));**

(f) **consider seeking legislative support to make amendments to the Sewage Services Ordinance for providing appropriate penalty clauses to deter TES traders from intentionally providing false business-classification information to the WSD and the DSD for the purpose of evading TES (para. 4.41(c));**

(g) **make amendments to the water-account application form to the effect that applicants are required to declare in the form as to whether or not their businesses are chargeable to TES (para. 4.41(d)); and**

(h) **with a view to identifying TES-omission cases for taking recovery actions:**

  (i) **conduct examinations of 7,692 licensed food premises which had been in operation before May 2005 (para. 4.41(e)(i));**

  (ii) **request the FEHD to provide the DSD with information of convicted cases of unlicensed restaurants or food factories for examination (para. 4.41(e)(ii)); and**

  (iii) **conduct examinations of all licensed private clubs having non-TES accounts (para. 4.41(e)(iii)).**

Response from the Administration

16. The Administration agrees with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Work of the Drainage Services Department

1.2 Hong Kong has established an extensive public sewerage system, which covers areas inhabited by 93% of the population and is managed by the Drainage Services Department (DSD). For areas not yet connected to the system, residents are required to install private facilities, such as septic tanks, for handling sewage before its disposal. Every day, 2.7 million cubic metres (m^3) of sewage produced from residential, commercial and industrial premises is disposed of through the public sewerage system.

1.3 Under the policy directives of the Environment Bureau (ENB — Note 1), the DSD is responsible for the collection, treatment and disposal of sewage through the public sewerage system. The system comprises 1,725 kilometres of sewers (mainly laid underground), 224 pumping stations and 68 sewage treatment works, including:

(a) 21 preliminary treatment works for screening and removal of grit;

(b) 6 primary and chemically enhanced primary treatment works for screening, removal of grit and sedimentation of solid waste and suspended solids;

(c) 40 secondary treatment works for purification of sewage through a biological treatment process; and

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Note 1: *In July 2007, the ENB was formed to take up the policy responsibility on environmental matters, including sewage services. Before July 2007, the policy responsibility was taken up by the then Environment, Transport and Works Bureau (July 2002 to June 2007), the then Environment and Food Bureau (January 2000 to June 2002), the then Planning, Environment and Lands Bureau (July 1997 to December 1999), and the then Planning, Environment and Lands Branch (September 1989 to June 1997). For simplicity, all these policy bureaux are referred to as the ENB in this Audit Report.*

(d) 1 tertiary treatment works at Ngong Ping of Lantau Island adopting physical and biological processes to remove nutrients and remaining suspended solids from sewage.

In recent years, the DSD has continued its efforts to construct and operate new sewage treatment facilities to improve the public sewerage system.

Sewage Services Charging Scheme

1.4 In March 1994, with an objective of fully recovering the operating costs (i.e. excluding capital costs and depreciation) of sewage services by levying sewage charges on water consumers, the Sewage Services Trading Fund, managed by the DSD, was set up under the Trading Funds Ordinance (Cap. 430). Subsequent to the enactment of the Sewage Services Ordinance (Cap. 463) in 1994, and the Sewage Services (Sewage Charge) Regulation (Cap. 463A) and the Sewage Services (Trade Effluent Surcharge) Regulation (Cap. 463B) in 1995, the Sewage Services Charging Scheme (SSCS) was introduced in April 1995. Under the SSCS, a water consumer whose premises are connected to a public sewer needs to pay:

(a) a sewage charge (SC); and

(b) a trade effluent surcharge (TES) if he operates one of the 27 designated trades (Note 2 — see Appendix A) which produces sewage with a pollution strength in terms of chemical oxygen demand (COD — Note 3) higher than that of domestic sewage. With reference to the average pollution strength of domestic sewage, the DSD has determined that a trade producing sewage with a COD value higher than 500 gram per cubic metre (g/m^3) is chargeable to TES.

Note 2: *Between April 1995 and July 2008, TES had been applied to 30 trades. Since August 2008, after removing 3 trades (Bleaching and dyeing of garments, Textile stencilling and printing, and Laundries) from the 30 trades, the number of TES trades has been reduced to 27.*

Note 3: *COD measures the quantity of organic matters in a cubic metre of sewage, expressed in gram per cubic metre, which will be decomposed in sea water through the oxidation process.*

1.5 SC is chargeable on all water consumers with a water account with the Water Supplies Department (WSD) whose premises are connected to the public sewerage system. In 2013-14, the SC rate is $2.05 per m^3 of water supplied. For domestic water accounts, the first 12 m^3 of water supplied in a four-monthly period is exempt from SC. This arrangement is not applicable to non-domestic water accounts (Note 4). As of 31 March 2013, of the 2.79 million water accounts:

(a) 2.61 million were SC accounts (comprising 2.37 million domestic accounts and 0.24 million non-domestic accounts); and

(b) 180,000 were non-SC accounts.

1.6 Based on the cost of treating sewage of different COD values, the DSD has determined the TES rates for 27 trades which are set out in the Sewage Services (Trade Effluent Surcharge) Regulation (see Appendix A). As of 31 March 2013, there were 22,000 TES accounts.

Administration of SSCS

1.7 In March 1998, on the grounds that the operating costs of the Sewage Services Trading Fund (see para. 1.4) could not be met by its revenue, the Trading Fund was dissolved. Since then, the DSD has prepared annual Sewage Services Operating Accounts. Furthermore, the Sewage Services Accounts Committee (Note 5) has been set up to examine the Sewage Services Operating Accounts, analyse financial performance and consider changes in SC and TES rates.

Note 4: *For non-domestic accounts (such as trade and government accounts), ten trades which produce less volume of sewage than that of water supplied are chargeable to 70% of water supplied. For example, the ice making industry produces less volume of sewage than that of water supplied.*

Note 5: *The Committee is chaired by the Permanent Secretary for the Financial Services and the Treasury (Treasury), with members including representatives from the Financial Services and the Treasury Bureau, the ENB, the DSD, the Treasury and the Information Services Department.*

1.8 The Sewage Services Branch (SS Branch — see Appendix B) of the DSD, with a strength of 47 permanent staff and 7 non-civil-service contract staff in three sections (the Customer Services and Asset Management Section, the Operation Section and the Sewage Revenue Section), is responsible for the administration of the SSCS. The SS Branch's duties include:

- identifying SC and TES accounts;
- collecting SC and TES;
- processing applications for revising TES rates; and
- handling related customer enquiries.

1.9 The WSD collects SC and TES on behalf of the DSD which are included in monthly or four-monthly water bills (Note 6) issued to water consumers. In 2011-12, the Sewage Services Operating Accounts recorded an operating deficit of $536 million, as follows:

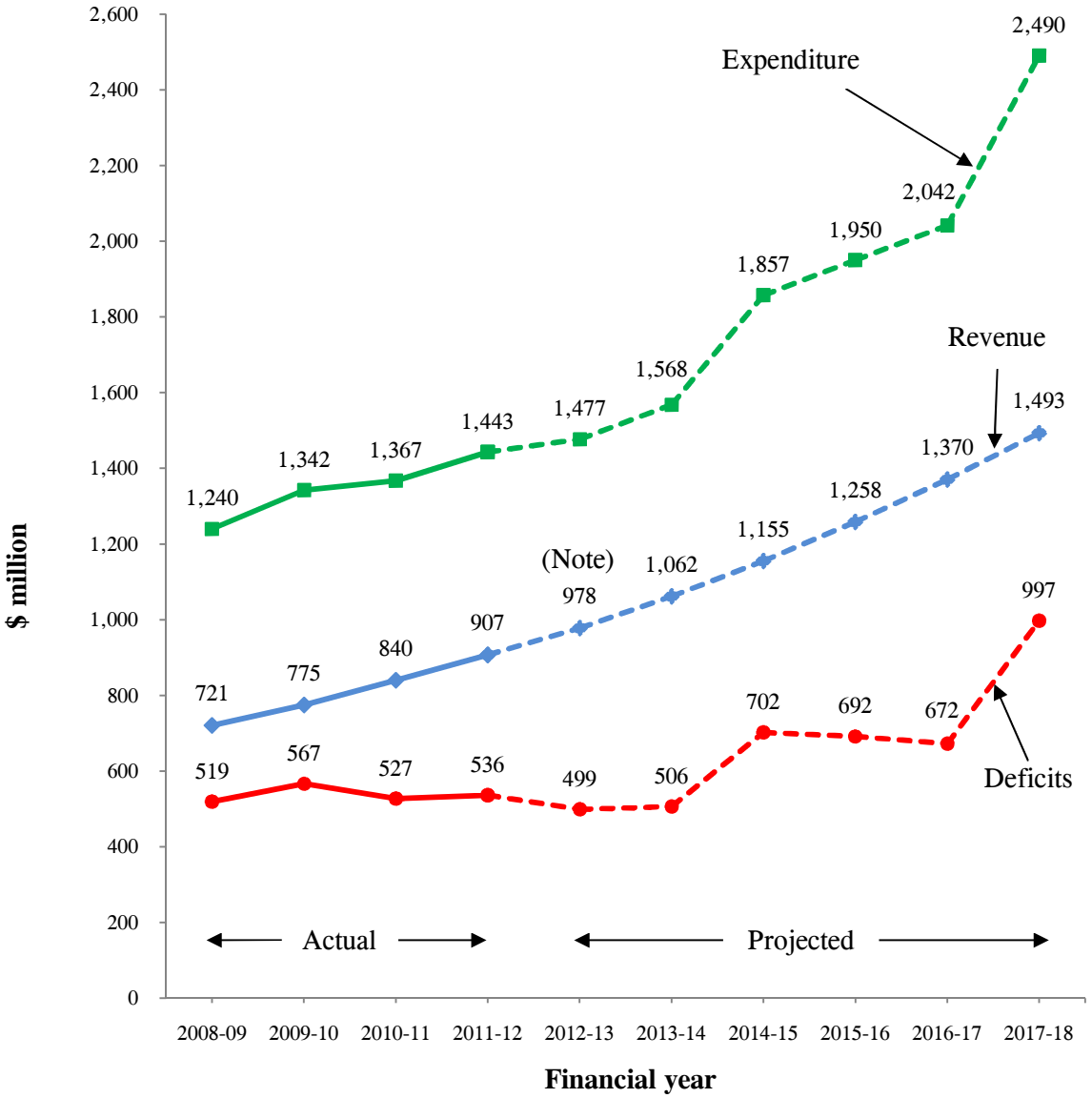
Particulars	$ million
Revenue	907
Operating cost (excluding depreciation)	1,443
Operating deficit	(536)

Figure 1 shows the actual/projected financial performance of the sewage services for the years 2008-09 to 2017-18, with breakdown of the operating deficits of SC and TES in Figure 2.

Note 6: *The WSD issues water bills for water accounts with large water consumption (i.e. non-domestic accounts with a water meter of diameter equal to or greater than 40 millimetres or where the average daily water consumption exceeds 40 m^3) on a monthly basis, whereas other water accounts are issued with water bills every four months.*

Figure 1

Financial performance of sewage services (2008-09 to 2017-18)



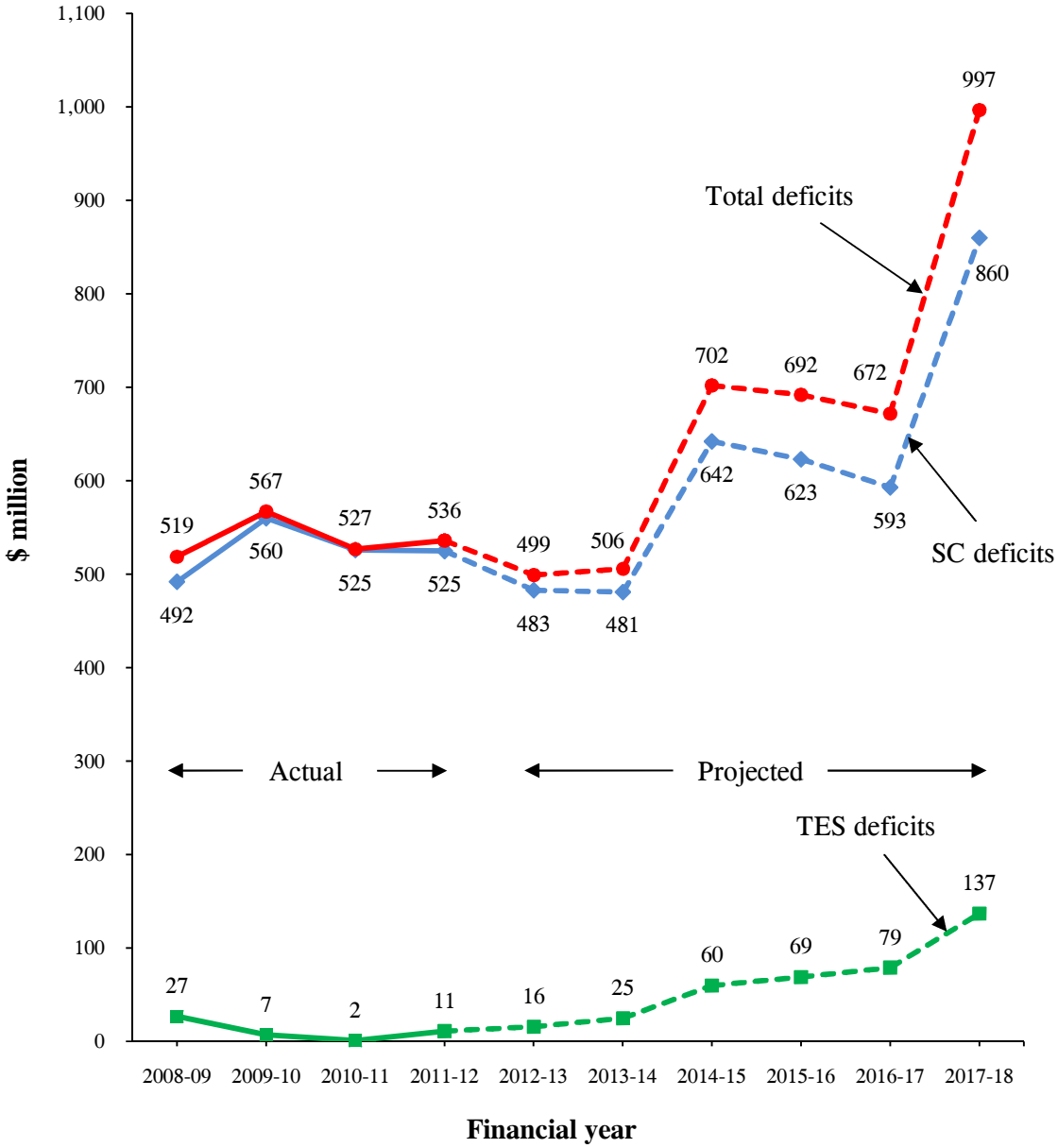
Source: *Audit Commission analysis of DSD records*

Note: *In August 2013, the DSD informed the Audit Commission that, subject to the finalisation of the 2012-13 Sewage Services Operating Accounts, the actual SC and TES collected in 2012-13 were $776 million and $207 million respectively, or $983 million in total revenue.*

Remarks: *Data of 2008-09 to 2011-12 are actual. Those of 2012-13 to 2017-18 are projections made by the DSD. Actual results may differ from the projections.*

Figure 2

Operating deficits of SC and TES
(2008-09 to 2017-18)



Source: *Audit Commission analysis of DSD records*

Remarks: *Data of 2008-09 to 2011-12 are actual. Those of 2012-13 to 2017-18 are projections made by the DSD. Actual results may differ from the projections.*

Audit reviews

1.10 In 2012-13, the DSD collected SC of $776 million from 2.61 million SC accounts and TES of $207 million from 22,000 TES accounts. According to the DSD, the annual operating deficit of the SSCS is projected to double from $499 million in 2012-13 to $997 million in 2017-18.

1.11 In 2010, the Audit Commission (Audit) conducted a review to examine the planning and administration of the village sewerage programmes, the results of which were included in Chapter 9 of the Director of Audit's Report No. 55 of October 2010. In the review, Audit found problems relating to sewer connection of village houses in the New Territories. These sewer connection problems might have affected the levying of SC. Audit has recently conducted a review of the Government's efforts in administering the SSCS with a view to identifying areas for improvement. The review focuses on the following areas:

(a) recovery of sewage services operating costs (PART 2);

(b) collection of sewage charges (PART 3);

(c) collection of trade effluent surcharges (PART 4); and

(d) compilation of management information (PART 5).

In this Audit Report, Audit has identified areas where improvements can be made by the Government in administering the SSCS, and has made recommendations to address the issues identified.

General response from the Administration

1.12 The Director of Drainage Services fully agrees with the audit recommendations. He has said that there is room for improvement in DSD work and the DSD will strive for improvement in the provision of sewage services, which is in line with the DSD's vision.

1.13 The Director of Water Supplies fully agrees with the audit recommendations related to the WSD. He has said that there is room for improvement in WSD work and the WSD will continue to work closely with the DSD to strive for improvement in the provision of quality water services, which is in line with the WSD's vision.

Acknowledgement

1.14 Audit would like to acknowledge with gratitude the full cooperation of the staff of the ENB, the DSD, the Environmental Protection Department (EPD), the WSD and the Food and Environmental Hygiene Department (FEHD) during the course of the audit review.

PART 2: RECOVERY OF SEWAGE SERVICES OPERATING COSTS

2.1 This PART examines the extent of achieving the Government's targets on recovering the sewage services operating costs through levying SC and TES.

Provision of sewage services

2.2 In 1994, the Government launched the Sewage Strategy for improving the water quality of Hong Kong. Under the Strategy, the DSD has implemented:

(a) the Harbour Area Treatment Scheme (HATS) in phases, under which sewage previously discharged into the Victoria Harbour is diverted to a treatment plant on Stonecutters Island for central treatment and disposal (Note 7); and

(b) the Sewerage Master Plans (SMPs) in phases, which involved installing sewers in a number of new development areas, replacing some aged sewers and upgrading some regional sewage treatment facilities.

2.3 As of 31 March 2012, the total capital cost of implementing HATS Stage 1 and Stage 2A, the SMPs and other sewage treatment facilities as shown in the Sewage Services Operating Accounts was $38 billion. Table 1 shows the sewage services capital costs from 2001-02 to 2011-12.

Note 7: *HATS Stage 1 (completed in 2001) at present handles 75% of the total sewage previously discharged into the Victoria Harbour, and Stage 2A (scheduled for completion in 2014) would handle the remaining 25% of the sewage. Stage 2B under planning would involve biological treatments which would reduce pollutants in sewage before it is discharged into the sea.*

Table 1

Sewage services capital costs
(2001-02 to 2011-12)

Financial year	$ million
2001-02	1,730
2002-03	1,431
2003-04	1,249
2004-05	1,218
2005-06	1,367
2006-07	934
2007-08	946
2008-09	1,063
2009-10	2,663
2010-11	3,857
2011-12	4,258
Total	20,716

Source: Audit analysis of DSD records

Sewage services revenue and expenditure

2.4 In September 1993, the Administration informed Legislative Council (LegCo) that it would conduct a public consultation exercise on the SSCS proposal under the following principles:

(a) the polluter-pays principle which underlay the SSCS should require charges to reflect the full cost of sewage services; and

(b) in the initial years, sewage charges would cover the operating costs of sewage services only and no depreciation of existing assets would be charged.

In December 1993, LegCo supported the implementation of the SSCS. Audit notes that, up to August 2013, the Government had not set a time frame for charging depreciation on assets in the Sewage Services Operating Accounts.

2.5 In launching the SSCS in April 1995, the SC rate was set at \$1.2 per m^3 of water supplied, and the TES rates were set ranging from \$0.11 to \$5.98 per m^3 of water supplied, depending on the average pollution strength of sewage of individual TES trades. In the first year of launching the SSCS in 1995-96, the operating costs were fully met by the sewage services charges.

2.6 Upon the dissolution of the Sewage Services Trading Fund in March 1998, the DSD commenced preparing annual Sewage Services Operating Accounts for the SSCS. For the purpose of ascertaining the cost recovery rates of SC and TES, the operating costs were apportioned between SC and TES. From 1998 to 2008, the cost apportionment rates between SC and TES ranged from 81%:19% to 78%:22%, depending on the sewage treatment cost of effluent of TES trades. Subsequent to the changes in COD values of TES trades after the conduct of a trade effluent survey in 2007-08, the cost apportionment rate between SC and TES has been maintained at a steady level of around 85%:15% since 2008.

Operating costs

2.7 On the expenditure side, with the completion of HATS Stage 1 in 2001 and the phased completion of works under the various SMPs, the operating costs of sewage services had increased from 2001 to 2012. The DSD has projected that the operating costs would further increase in the coming years upon the completion of HATS Stage 2A in 2014, and the phased completion of works under the various SMPs.

2.8 According to the DSD, over the years, it has collaborated with the EPD (which is responsible for monitoring water quality) in implementing measures to reduce the operating costs and improve operational efficiency of the sewage services. These measures include streamlining the related staff structure, outsourcing sewerage maintenance and supporting operations, and adopting energy-saving technologies for sewage services. In December 2006, the EPD informed the Panel on Environmental Affairs (EA Panel) of LegCo that, after completing a cost-saving exercise, the unit cost (excluding depreciation) per m^3 of sewage treatment had been reduced by 11% between 2002-03 and 2005-06, despite

the increase in operating costs (excluding depreciation) upon the commissioning of the HATS Stage 1 in 2001. According to the DSD, in 2012-13, as a result of implementation of cost-saving measures, it achieved an operating cost saving of $18.1 million.

Revenue

2.9 On the revenue side, the SC rate had remained unchanged from April 1995 to March 2008. In May 2007, LegCo approved increases in the SC rate by 9.3% per annum (the ten-year SC-rate increment scheme) from April 2008 to April 2017 (see Table 2).

Table 2

SC rates
(2007-08 to 2017-18)

Financial year	SC rate ($ per m^3 of water supplied)
2007-08	$1.20
2008-09	$1.31
2009-10	$1.43
2010-11	$1.57
2011-12	$1.71
2012-13	$1.87
2013-14	$2.05
2014-15	$2.24
2015-16	$2.44
2016-17	$2.67
2017-18	$2.92

Source: DSD records

2.10 For TES rates, they had remained unchanged from April 1995 to July 2008. After examining the COD values of different TES trades, TES rates for individual trades were revised as follows:

(a) the TES rates for 13 trades were reduced and for 1 trade increased in August 2008; and

(b) the TES rates for the remaining 13 trades increased in two phases in August 2008 and August 2009 respectively.

Provision of information to LegCo

2.11 As a commitment to LegCo when the ten-year increment scheme for SC was approved by LegCo in May 2007, the ENB and the EPD, in collaboration with the Financial Services and the Treasury Bureau (FSTB) and the DSD, have since 2009 provided annually to the EA Panel summaries of the Sewage Services Operating Accounts (including the revenue and operating expenditure, and the cost recovery rates of SC and TES) as well as the progress of sewerage capital projects. Up to August 2013, five submissions had been made to the EA Panel.

Sewage services cost recovery targets

2.12 In May 2008, the Chief Executive-in-Council endorsed the following principles:

(a) the projected operating cost recovery rate for SC would be around 70% after implementing the ten-year SC-rate increment scheme (see para. 2.9) by 2017-18; and

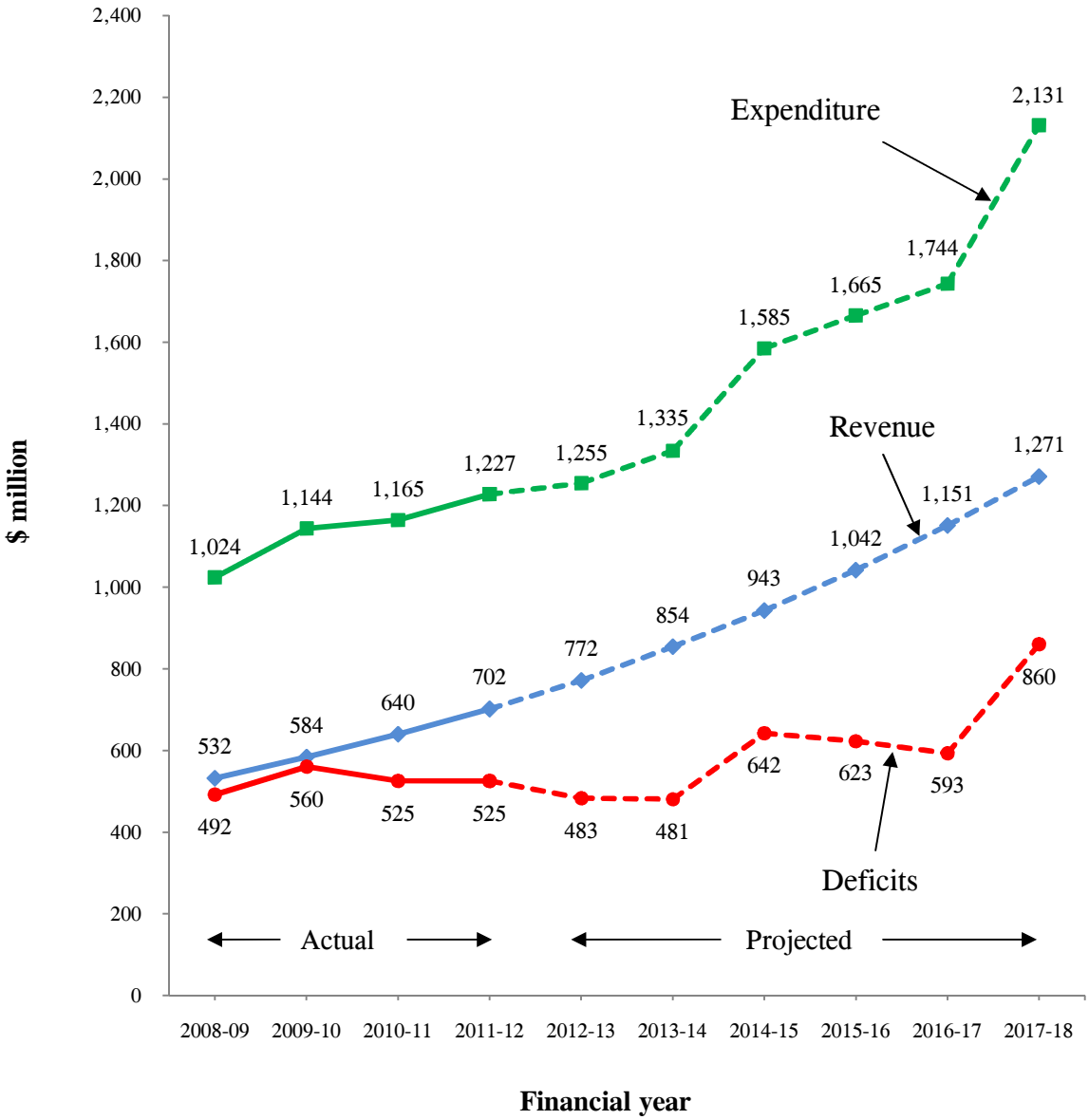
(b) the Government aimed to achieve a 100% cost recovery rate for TES by 2009-10.

Target cost recovery rates not achieved

2.13 Figures 3 and 4 show the revenue and expenditure of SC, and the SC cost recovery rates (revenue ÷ expenditure × 100%) respectively from 2008-09 to 2017-18. Figures 5 and 6 show such data for TES.

Figure 3

Revenue and expenditure of SC
(2008-09 to 2017-18)

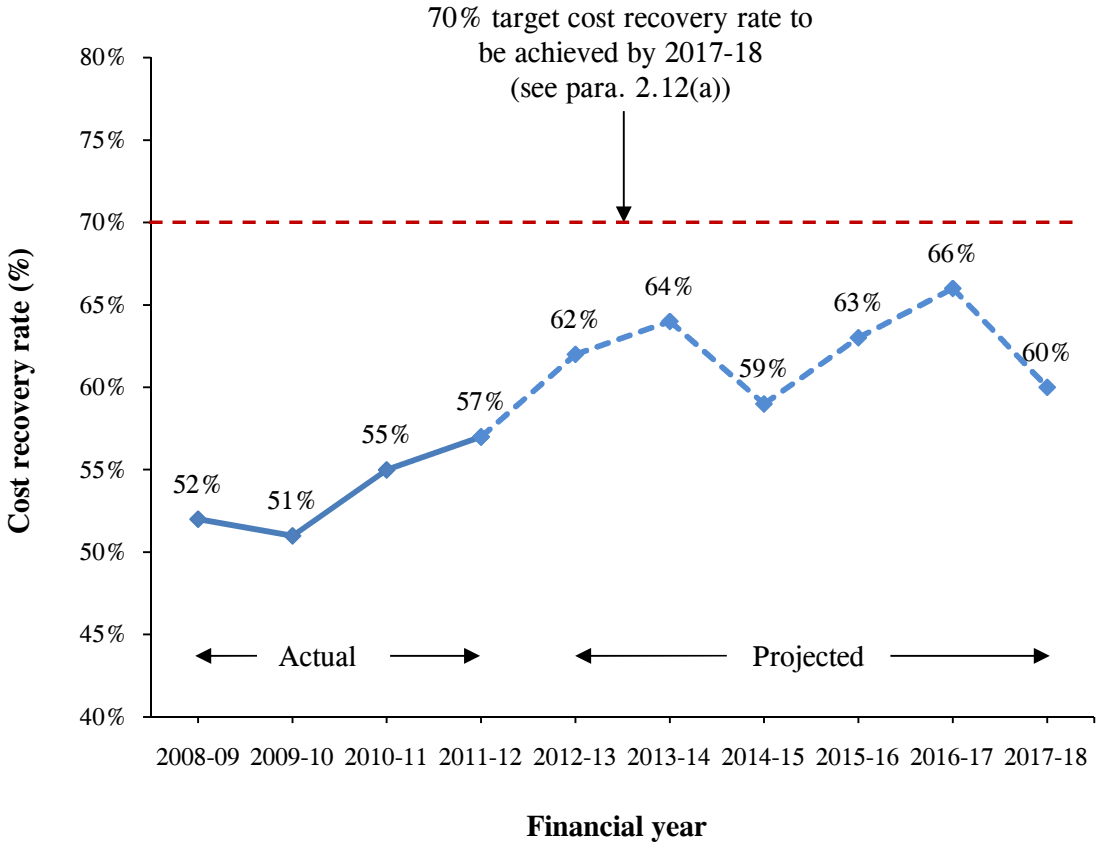


Source: *Audit analysis of DSD records*

Remarks: *Data from 2008-09 to 2011-12 are actual. Those from 2012-13 to 2017-18 are projections made by the DSD. Actual results may differ from the projections.*

Figure 4

SC cost recovery rates
(2008-09 to 2017-18)

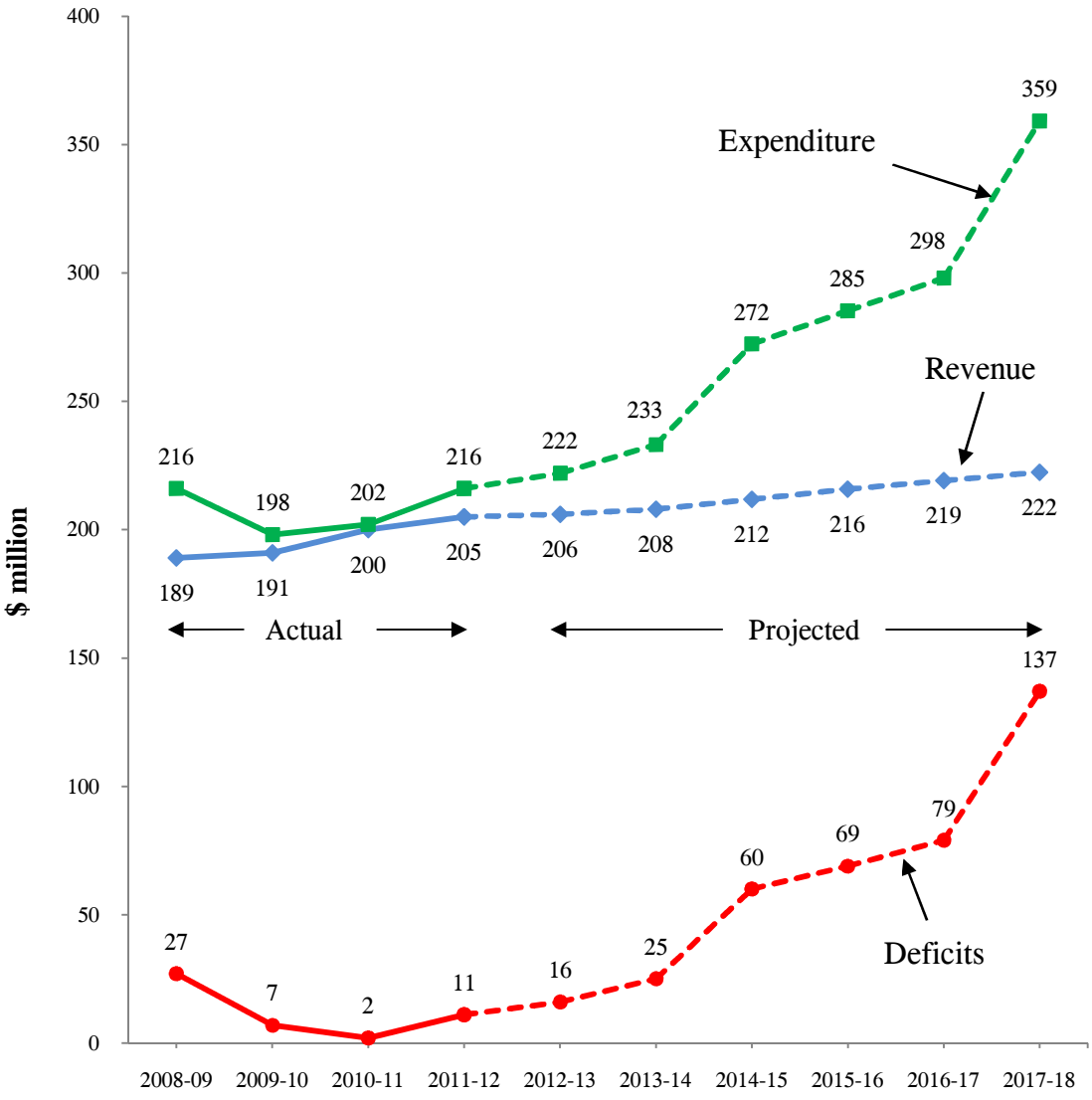


Source: *Audit analysis of DSD records*

Remarks: *Data from 2008-09 to 2011-12 are actual. Those from 2012-13 to 2017-18 are projections made by the DSD. Actual results may differ from the projections.*

Figure 5

Revenue and expenditure of TES
(2008-09 to 2017-18)

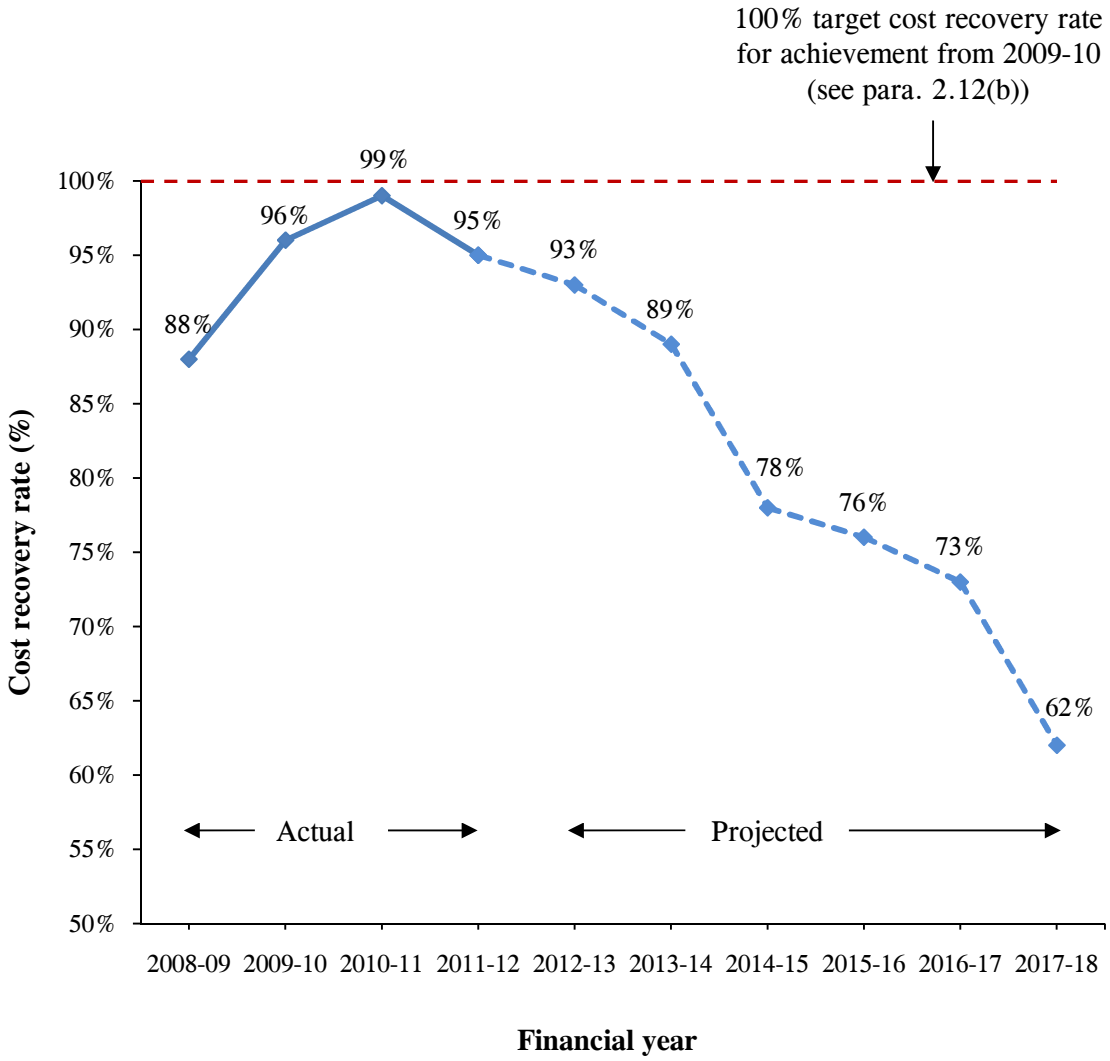


Source: *Audit analysis of DSD records*

Remarks: *Data from 2008-09 to 2011-12 are actual. Those from 2012-13 to 2017-18 are projections made by the DSD. Actual results may differ from the projections.*

Figure 6

TES cost recovery rates
(2008-09 to 2017-18)



Source: *Audit analysis of DSD records*

Remarks: *Data from 2008-09 to 2011-12 are actual. Those from 2012-13 to 2017-18 are projections made by the DSD. Actual results may differ from the projections.*

2.14 As shown in Figures 4 and 6:

(a) the DSD's SC cost recovery rate is 57% in 2011-12 and is projected to improve to 60% in 2017-18, which will fall short of the Government's target of 70% (see para. 2.12(a)); and

(b) the DSD's TES cost recovery rate is 95% in 2011-12 and is projected to deteriorate to 62% in 2017-18, which will also fall short of the Government's target of 100% (see para. 2.12(b)).

2.15 In Audit's view, the DSD needs to, in collaboration with the FSTB and the ENB, conduct a review to ascertain the reasons for not achieving the cost recovery targets on both SC and TES, and devise strategies and action plans to address the issue.

Audit recommendation

2.16 **Audit has *recommended* that the Director of Drainage Services should, in collaboration with the Secretary for the Environment and the Secretary for Financial Services and the Treasury, conduct a review to ascertain the reasons for not achieving the Government's cost recovery targets on SC and TES, and devise strategies and action plans to address the issue.**

Response from the Administration

2.17 The Director of Drainage Services agrees with the audit recommendation. He has said that:

(a) the DSD has been collaborating with the ENB, the EPD and the FSTB to review annually the SC and TES rates and their operating cost recovery rates; and

(b) the DSD will continue to explore and implement measures to reduce the operating cost of existing sewerage facilities and conduct annual reviews to assess the need for adjusting the SC and TES rates.

2.18 The Secretary for the Environment agrees with the audit recommendation. He has said that:

(a) under the Sewage Services Accounts Committee, the ENB and the EPD have been collaborating with the DSD and the FSTB to review annually the SC and TES rates, the cost saving measures and the operating cost recovery rates for both SC and TES; and

(b) the ENB will continue to closely monitor the DSD's implementation of various measures to reduce the operating cost of existing sewerage facilities and conduct annual reviews to assess the need for adjusting the SC and TES rates.

2.19 The Secretary for Financial Services and the Treasury agrees with the audit recommendation. He has said that:

(a) the Sewage Services Accounts Committee has been monitoring the financial performance of the sewage services operation and identified the shortfall situations as mentioned in paragraph 2.14; and

(b) in view of the projected deteriorating financial performance, the Committee has requested the DSD, in collaboration with the ENB, to devise strategies and action plans (including implementation and exploration of cost-saving measures) to improve the efficiency of the sewage services operation.

PART 3: COLLECTION OF SEWAGE CHARGES

3.1 This PART examines the actions taken by the DSD in collecting SC, focusing on:

(a) actions to identify SC-omission cases (paras. 3.2 to 3.12); and

(b) SC recovery from convicted cases of unauthorised use of water (paras. 3.13 to 3.16).

Actions to identify SC-omission cases

SC collection system

3.2 According to the Sewage Services Ordinance, a water consumer whose premises are connected to the public sewerage system should pay SC at a prescribed rate (see para. 1.5) based on the volume of water supplied to the premises. The WSD collects SC and TES on behalf of the DSD by issuing bills through its Customer Care and Billing System (CCBS — Note 8).

3.3 SC is chargeable on all water accounts except those of premises located in the following unsewered areas or developments (collectively referred to as "unsewered areas"):

(a) areas not yet connected to the public sewerage system; and

(b) developments which have been installed with private sewage treatment facilities acceptable to the EPD, and their sewage is not discharged through the public sewerage system.

Note 8: *Through the system interface functions, information on collection of SC and TES of the DSD is uploaded onto the CCBS for billing purposes.*

3.4 Under the DSD, the SS Branch takes the lead in administering the SC collection system. Other responsible DSD Branches include the Projects and Development Branch (P&D Branch) and the Operations and Maintenance Branch (O&M Branch — see Appendix B). Details are as follows:

(a) ***The P&D Branch and the HATS Division of the SS Branch (collectively referred to as the Project Divisions).*** The Project Divisions are responsible for constructing new public sewers under capital works projects for unsewered areas;

(b) ***The O&M Branch.*** Three District Divisions (Hong Kong and Islands, Mainland South and Mainland North) under the O&M Branch are responsible for the operation and maintenance of all public sewers. Upon completion of checking of sewer connections from premises to public sewers, the O&M Branch will inform the SS Branch for taking SC levying actions. In addition, the O&M Branch maintains, updates and provides the SS Branch with an updated List of Unsewered Areas every six months; and

(c) ***The SS Branch.*** The SS Branch is responsible for levying SC on all water accounts where the related premises have been connected to the public sewerage system. The SS Branch periodically uploads information in the updated List of Unsewered Areas onto the CCBS for matching of addresses of new applications for water accounts of new buildings for the purpose of levying SC. Upon receipt of a new application for a water account, the related address will be matched (through the CCBS) with areas in the List of Unsewered Areas maintained in the CCBS. For an address located within an unsewered area, SC will not be levied. Otherwise, SC will be levied on the account.

Under the village sewerage programmes, the Project Divisions are the works agent for implementing the related sewerage works projects, which are under the EPD's management. Upon completion of sewer connection works by village house owners to their houses, the owners will inform the EPD of the works completion and the latter will inform the DSD of such connections for taking SC levying actions.

Sources of information for levying SC

3.5 For premises connected to the public sewerage system, the SS Branch relies on the following sources of information for levying SC on pertinent water accounts:

(a) under the EPD's village sewerage programmes, for village houses in the New Territories, upon the completion of sewer connection to public sewers, the EPD will provide the O&M Branch with a list of premises newly connected to public sewers with addresses (List of Newly Connected Premises). The O&M Branch will forward the List to the SS Branch for taking SC levying actions;

(b) for other sewer connection works, upon checking of completion of the works, the O&M Branch will inform the SS Branch of the related premises for taking SC levying actions;

(c) every three months, the O&M Branch will provide the SS Branch with a List of Newly Connected Premises with addresses to ensure that there is no omission of premises warranting the levying of SC; and

(d) the O&M Branch updates the List of Unsewered Areas every six months and provides it to the SS Branch.

3.6 Upon noting that some premises have been newly connected to the public sewerage system, for the purpose of levying SC, the SS Branch will manually change the sewer connection status of related water accounts in the CCBS to SC chargeable.

Existing premises with non-SC accounts

3.7 For premises which are registered with non-SC accounts, the CCBS generates weekly reports of new water accounts (e.g. resulting from changes of account holders) which are not SC chargeable (Weekly New Accounts Reports). The SS Branch makes use of these Weekly New Accounts Reports for investigation of potential omissions of levying SC on pertinent water accounts caused by omissions in updating the SC status of water accounts after sewer connections in the related areas.

Areas for improvement

Omissions and long time taken in levying SC on premises

3.8 Based on the Weekly New Accounts Reports generated from the CCBS (see para. 3.7), the SS Branch conducts matching of the addresses of non-SC accounts with the addresses in the List of Unsewered Areas. For any of the addresses of non-SC accounts which are not found in the List of Unsewered Areas, the SS Branch will conduct investigations to ascertain if the account status is correct. If the DSD finds that a non-SC account should have been an SC account, it will take rectification actions to recover SC from pertinent water-account holders.

3.9 Audit examination of SC recovery cases (identified by the DSD through its investigations — see para. 3.8) revealed two cases (see Cases 1 and 2) where the DSD had taken a long time before identifying the omissions in levying SC on premises which had been connected to public sewers.

Case 1

Estate A in Sham Tseng

In March 2011, based on a Weekly New Accounts Report, the SS Branch identified a non-SC account in Estate A in Sham Tseng and requested the Mainland South Division of the O&M Branch to help ascertain whether the related premises had been connected to public sewers. In response, the Division informed the SS Branch that Estate A had not been connected to public sewers. In April 2011, the Division clarified that Estate A had already been connected to public sewers.

2. In November 2011, the SS Branch's investigations revealed that 18 of the 1,129 households in Estate A had not been levied SC since completion of the sewer connection works in March 2005. The SS Branch subsequently took actions to recover a total of $22,310 of SC from the 18 households.

DSD comments in July 2013

3. In July 2013, the DSD informed Audit that: (a) as the 18 premises had different address formats (Note), after being informed by the Mainland South Division that Estate A had been connected to public sewers, the SS Branch did not update the sewer connection information of all pertinent water accounts in the CCBS, resulting in the omissions; and (b) there might also be an oversight in providing the incorrect information in March 2011.

Audit comments

4. In Audit's view, the DSD needs to:

(a) take actions to resolve the address-format problem relating to addresses in the CCBS and those in the List of Newly Connected Premises; and

(b) conduct a review to ascertain why there were omissions in levying SC on 18 households in Estate A from March 2005 to November 2011, and take necessary measures with a view to preventing recurrence of such omissions.

Source: *DSD records*

Note: *For example, for a building newly connected to a public sewer, its address is registered in the form of a lot number in the CCBS, while the address in the List of Newly Connected Premises is in the form of a village name.*

Case 2

Estate B in Fanling

In March 2011, based on a Weekly New Accounts Report, the SS Branch identified a non-SC account in Estate B in Fanling and requested the Mainland North Division of the O&M Branch to help ascertain whether the related premises had been connected to public sewers. In response, the Division informed the SS Branch that Estate B had been connected to public sewers in November 2005, but the SS Branch had not updated the sewer connection information of all pertinent water accounts in the CCBS.

2. In March 2013, the Mainland North Division re-confirmed with the estate management office of Estate B that the sewers had been connected in November 2005.

3. In May 2013, the SS Branch's investigations revealed that 215 of the 231 households had not been levied SC since completion of the sewer connection works in November 2005. The SS Branch subsequently took actions to recover a total of $171,973 from the 215 households. Owing to the six-year debt-recovery limitation period (Note), the SC recovery action could only be taken for outstanding SC from June 2007.

DSD comments in July 2013

4. In July 2013, the DSD informed Audit that the late billing of the SC accounts was attributable to an oversight in bringing up the sewer-connection information for action.

Audit comments

5. In Audit's view, the DSD needs to:

(a) conduct a review to ascertain why there were omissions in levying SC on 215 households in Estate B from November 2005 to May 2013, and take necessary measures with a view to preventing recurrence of such omissions;

(b) conduct a review to ascertain why the SS Branch needed to take two years and two months from March 2011 to May 2013 to identify the omissions for taking recovery actions, and take necessary measures with a view to preventing recurrence of such shortcomings; and

(c) take actions to prevent recurrence of cases of loss of Government revenue owing to any delay in taking SC recovery action after the six-year debt-recovery limitation period.

Source: *DSD records*

Note: *Under the Limitation Ordinance (Cap. 347), actions to recover outstanding accounts shall not be brought after the expiration of six years from the date on which the cause of action accrued.*

Inadequate checking of SC-omission cases

3.10 Audit notes that in 2012-13, of the 8,944 non-SC new accounts included in the Weekly New Accounts Reports, the addresses of 1,868 (21%) accounts could not be matched with those in the List of Unsewered Areas (suspected SC-omission cases). According to the DSD, it only selected suspected SC-omission cases which would likely lead to significant SC recovery for investigation. However, Audit notes that the DSD has not issued guidelines on the selection of suspected SC-omission cases for investigation. Furthermore, up to July 2013, of the 1,868 suspected SC-omission cases, the SS Branch had only selected and completed detailed investigation of 55 cases (3%). In Audit's view, the DSD needs to strengthen actions in investigating suspected SC-omission cases.

3.11 Audit also notes that, of the 55 suspected SC-omission cases investigated by the DSD, 40 (73%) were found to be SC chargeable. The DSD also conducted investigations of non-SC accounts in nearby areas of the 40 confirmed SC-chargeable cases and found that additional 377 non-SC accounts were SC chargeable. As a result, the DSD took action to recover a total of $360,938 of SC from the pertinent account holders.

3.12 In Audit's view, the DSD needs to issue guidelines to the SS Branch on selection of suspected SC-omission cases for review. In view of the potential significant number of non-SC accounts which are SC chargeable, the DSD needs to task the SS Branch to carry out a one-off exercise to examine the SC status of all the 180,000 non-SC accounts. After conducting the one-off exercise, the DSD needs to task the SS Branch to conduct examination in a timely manner of suspected SC-omission cases as revealed in the Weekly New Accounts Reports.

SC recovery from convicted cases of unauthorised use of water

3.13 In Chapter 12 of the Director of Audit's Report No. 57 issued in October 2011 on "Water losses from unauthorised consumption and inaccurate metering", Audit reported that there were 227 convicted cases of unauthorised use of water under section 29(2) of Waterworks Ordinance (Cap. 102 — Note 9). After obtaining legal advice in February 2012, the DSD noted that it could recover SC and, where appropriate, TES from convicted cases of unauthorised use of water.

3.14 In March 2012, at the request of the DSD, the WSD provided the DSD with a summary of 349 convicted cases of unauthorised use of water (which had taken place from 2006 to 2011). The DSD estimated that SC of $220,000 could be recovered from the convicted persons in 224 cases. For the remaining 125 cases, the use of water was not chargeable to SC.

Areas for improvement

Recovery action on convicted cases not yet taken

3.15 Since November 2011, the DSD has discussed with the WSD to explore the possibility of levying SC and TES on persons convicted of unauthorised use of water. However, up to June 2013, the DSD had not taken recovery actions on the convicted persons in the 224 cases (see para. 3.14). In July 2013, after obtaining legal advice, the WSD informed the DSD that:

(a) it might disclose data of the convicted persons to the DSD for collecting SC and TES, subject to the DSD's confirmation that the DSD had no other means by which SC and TES could be collected from the convicted persons, and the exemption clause provided in the Personal Data (Privacy) Ordinance (Cap. 486) was applicable for the use of the data for collecting SC and TES; and

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Note 9: *Section 29(2) of the Waterworks Ordinance states that any person who contravenes unlawful taking of water shall be guilty of an offence and shall be liable to pay a charge for the water so taken or diverted as if there had been a supply of that water to him as a consumer.*

(b) if the WSD was to collect SC and TES from the convicted persons on behalf of the DSD, the DSD needed to authorise the WSD to take such actions.

3.16 Audit notes that, under the six-year debt-recovery limitation period, the DSD can only take recovery actions on outstanding SC and TES in the previous six years, say from August 2007 to July 2013. According to the DSD, during this period of time, there were a total of 320 convicted cases of unauthorised use of water, and 199 of which might be chargeable for SC. In Audit's view, the DSD needs to, in collaboration with the WSD, take actions in a timely manner to recover SC and TES from convicted persons of cases involving unauthorised use of water. Owing to the six-year debt-recovery limitation period, any delay in taking recovery action will lead to a loss of Government revenue.

Recent development

3.17 In June 2013, the DSD set up a Task Force headed by the Deputy Director of Drainage Services to oversee the matter with a view to identifying improvement measures for levying SC.

Audit recommendations

3.18 **Audit has *recommended* that the Director of Drainage Services should:**

Actions to identify SC-omission cases

(a) **take actions to resolve the address-format problem relating to addresses in the CCBS and those in the List of Newly Connected Premises;**

(b) **conduct a review to ascertain why there were omissions in levying SC on 18 households in Estate A and 215 households in Estate B, and take necessary measures with a view to preventing recurrence of such omissions;**

(c) **conduct a review to ascertain why the SS Branch needed to take two years and two months from March 2011 to May 2013 to identify the**

SC omissions in Estate B for taking recovery actions, and take necessary measures with a view to preventing recurrence of such shortcomings;

(d) **take necessary measures with a view to preventing recurrence of cases of loss of Government revenue owing to any delay in taking SC recovery action, with due regard to the six-year debt-recovery limitation period;**

(e) **issue guidelines to the SS Branch on selection of suspected SC-omission cases (as revealed in the Weekly New Accounts Reports) for review;**

(f) **task the SS Branch to carry out a one-off exercise to examine the SC status of all non-SC accounts;**

(g) **task the SS Branch to conduct examination in a timely manner of suspected SC-omission cases as revealed in the Weekly New Accounts Reports; and**

SC recovery from convicted cases of unauthorised use of water

(h) **in collaboration with the Director of Water Supplies, take actions in a timely manner to recover SC and TES from convicted persons of cases involving unauthorised use of water.**

Response from the Administration

3.19 The Director of Drainage Services agrees with the audit recommendations. He has said that:

Actions to identify SC-omission cases

(a) the DSD will include estate and village names in different address combinations in the List of Newly Connected Premises for matching with water-account addresses in the CCBS. Meanwhile, the DSD will explore with the WSD ways to resolve the address-format problem in the CCBS;

(b) the DSD has taken preventive measures to address the issue in paragraph 3.18(b), including enhancement of measure to retrieve pertinent water-account information in the CCBS, issuing a new departmental technical circular and developing a new database for timely reporting and monitoring new sewer connections and subsequent billing of SC;

(c) the DSD will conduct a review of the omissions in levying SC on households in Estate A and Estate B and take further preventive measures where necessary;

(d) since September 2013, the DSD has made use of a new register to record SC-omission cases and monitor the SC recovery action. Quarterly reports will be provided to the management for monitoring purposes;

(e) the DSD will conduct a review of the case mentioned in paragraph 3.18(c) and take further preventive measures where necessary;

(f) in September 2013, the DSD issued a departmental technical circular containing guidelines on selection of suspected SC-omission cases for review;

(g) the DSD will carry out a one-off exercise to examine the SC status of all non-SC accounts;

(h) the DSD will review in a timely manner new suspected SC cases after conducting the one-off exercise in (g); and

SC recovery from convicted cases of unauthorised use of water

(i) the DSD and the WSD have introduced procedures to handle convicted cases of unauthorised use of water in a timely manner. Since August 2013, the DSD has taken actions to recover SC and TES from the convicted persons and it has set a target to process all previously identified convicted cases by December 2013.

3.20 The Director of Water Supplies agrees with the audit recommendation related to the WSD in paragraph 3.18(h).

PART 4: COLLECTION OF TRADE EFFLUENT SURCHARGES

4.1 This PART examines the actions taken by the DSD in collecting TES, focusing on:

(a) actions to identify TES-omission cases (paras. 4.2 to 4.28); and

(b) reassessment of TES rate (paras. 4.29 to 4.40).

Actions to identify TES-omission cases

4.2 An applicant for a new water account needs to complete an application form in which he is required to indicate whether the water account applied for is for domestic or non-domestic purposes (Note 10). If he applies for a non-domestic water account, he is also required to choose 1 of 102 business classifications (provided in a booklet attached to an application form — see Appendix C) that "corresponds most precisely to the account category at the service address", and fill in the business classification and its code in the application form. Applicants are reminded in the application form that they should notify the DSD if there are any subsequent changes to their businesses which will affect the business classification indicated in the form. Of the 102 business classifications, 30 are chargeable to TES (Note 11). However, Audit notes that these 30 TES-related business classifications are not explicitly made known in the application form. Based on the business classifications indicated by the applicants, TES is levied on pertinent water accounts through the CCBS of the WSD (see para. 3.2).

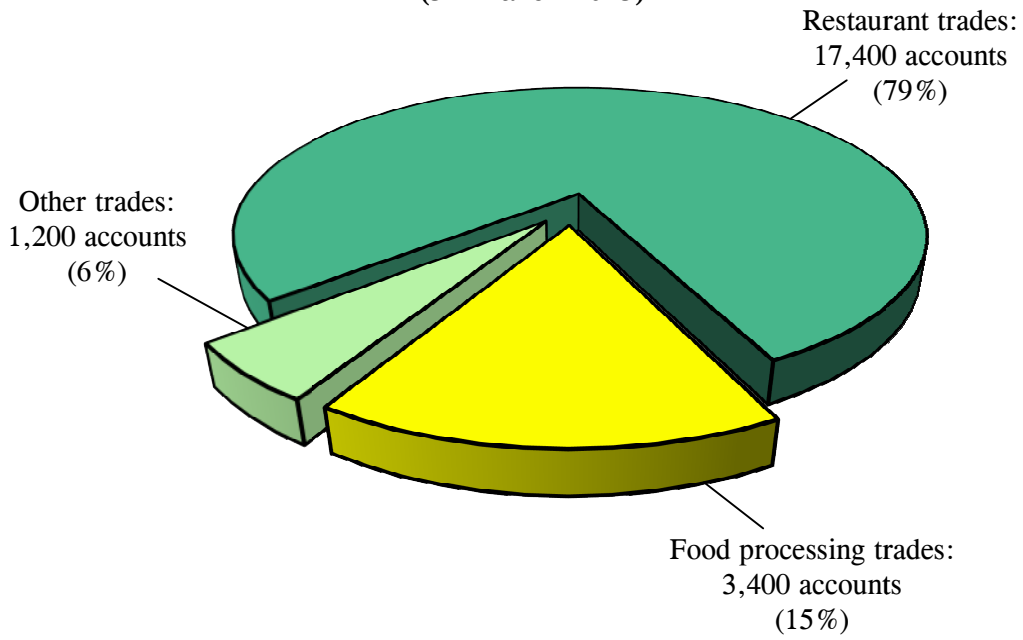
4.3 As of March 2013, of the 240,000 non-domestic water accounts, 22,000 were TES accounts. In 2012-13, the TES revenue was $207 million and the main types of business chargeable to TES were restaurants and food processing trades (see Figures 7 and 8).

Note 10: *The water charges of domestic accounts are based on a four-tier structure of progressively increasing prices, with the first tier of 12 m^3 of water supply being free of charge. For non-domestic accounts, a flat rate is charged for any volume of water supply.*

Note 11: *Of the 27 trades chargeable to TES (see Appendix A), one trade (namely Restaurants) is subdivided into 4 business classifications (namely Restaurants-Chinese, Restaurants-non-Chinese, Restaurants-fast food shops and Restaurants-other eating places, see Note to Appendix C). Therefore, there are 30 TES-related business classifications.*

Figure 7

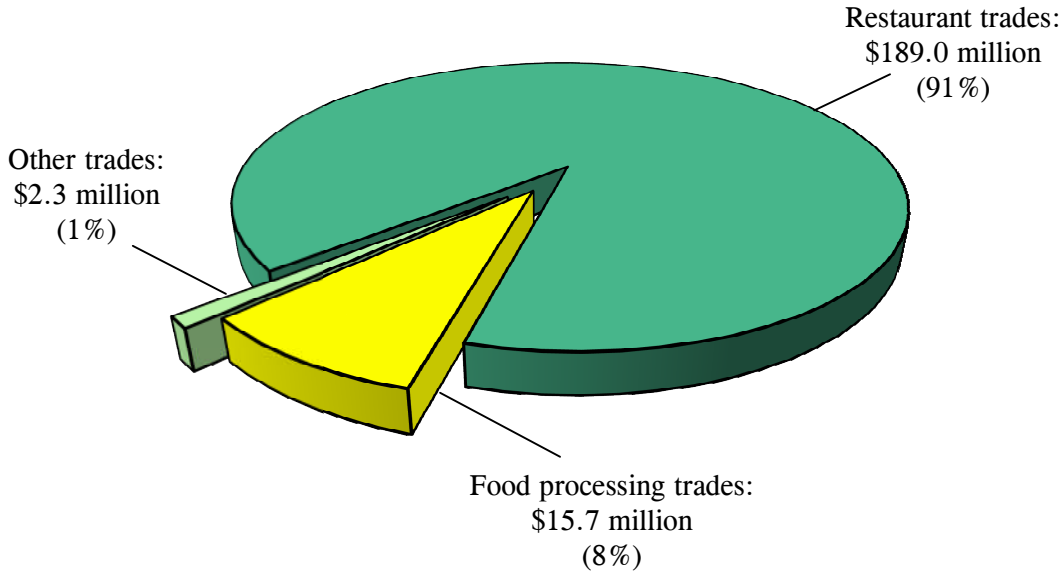
22,000 TES accounts
(31 March 2013)



Source: DSD records

Figure 8

$207 million of TES revenue
(2012-13)



Source: DSD records

DSD actions to identify TES-omission cases

4.4 The DSD mostly relies on the business classifications indicated by water-account applicants in levying TES on relevant traders. However, the DSD is aware of the fact that some TES traders have not properly filled in their business classifications when applying for water accounts, resulting in their accounts being incorrectly treated as non-TES accounts. The DSD has taken the following actions with a view to identifying TES-omission cases:

(a) based on information provided by the FEHD, reviewing whether the water accounts of pertinent newly licensed food premises have been levied TES (see paras. 4.6 to 4.9); and

(b) selecting non-TES trade accounts with high water consumption to examine whether some of them should be chargeable to TES (see paras. 4.10 to 4.12).

4.5 Furthermore, the DSD also takes follow-up actions on suspected TES-omission cases based on relevant information in the media, public complaints and referrals from other Government departments.

DSD examination of newly licensed food premises

4.6 As shown in Figure 8, 99% (91%+8%) of the TES revenue was collected from the restaurant and food processing trades. In order to identify TES-omission cases from these two business categories, since May 2005, the DSD has requested the FEHD to periodically provide it with information of newly licensed food premises (Note 12) for examination.

Note 12: *Under the Public Health and Municipal Services Ordinance (Cap. 132), the FEHD is responsible for issuing licences to food premises after confirming full compliance with the licensing requirements relating to food safety and fire safety. Food premises include restaurants, food factories, bakeries, factory canteens, frozen confections factories and milk factories.*

Collection of trade effluent surcharges

4.7 Based on the addresses of the newly licensed food premises provided by the FEHD, the DSD will:

(a) ascertain whether the pertinent water accounts in the CCBS are TES chargeable;

(b) if the accounts are non-TES accounts, conduct site inspections of the food premises to assess whether they should be chargeable to TES;

(c) if the accounts are TES chargeable, send a letter to the pertinent water-account holders informing them that TES will be levied on their accounts, where the account holders may raise objection on the matter within three weeks from the issue date of the notification letter. In response to any objection, the DSD will conduct further reassessments and make a final decision on the objection; and

(d) levy TES on the relevant water accounts.

4.8 In the three years from 2010-11 to 2012-13, the DSD had taken actions to verify 7,247 water accounts (involving 4,092 TES accounts and 3,155 non-TES accounts) based on information on newly licensed food premises provided by the FEHD. After completing investigations, up to August 2013, the DSD had identified that 2,268 non-TES accounts (72% of 3,155 accounts) should have been chargeable to TES.

4.9 As a result, the DSD issued demand notes to these 2,268 water account holders to recover TES amounting to $10.5 million chargeable in the previous years.

DSD examination of high water-consumption accounts

4.10 In the seven years from 2001-02 to 2007-08, the DSD had requested the WSD to provide it with information of high water-consumption accounts of non-TES trades for it to verify whether they were chargeable to TES. Of the 927 non-TES trade accounts selected by the DSD for examination, it found that 294 (32%) were in fact chargeable to TES. The DSD took action to recover TES from the pertinent traders. According to the DSD, owing to additional work commitments (such as work relating to the reduction of the number of TES trades from 30 to 27 and changes of the TES rates), such examination work was not carried out from 2008-09 to 2010-11.

4.11 In June 2011, the DSD resumed the examination work. In view of the fact that many TES-omission cases were identified from water accounts that had been classified as "Retail shop" and "Other food products", the DSD focused its examination on accounts with high water consumption under these two non-TES business classifications, and requested the WSD to provide it with pertinent account information for examination. In response, the WSD provided the DSD with information on:

(a) a list of 584 non-TES trade accounts (of which the DSD selected 382 accounts (65%) for examination) as of June 2011 under the "Retail shop" business classification with an average daily water consumption exceeding 5 m^3 (which was the median of the daily water consumption of businesses in the "Restaurant" business classification); and

(b) a list of 36 non-TES trade accounts as of February 2012 under the "Other food products" business classification with an average daily water consumption exceeding 2 m^3 (which was the median of the daily water consumption of businesses in the "Slaughtering, preparing and preserving meat" business classification).

4.12 The DSD's examination of the 418 (382+36) cases revealed that 38 (9%) were in fact chargeable to TES and took action to recover TES from the pertinent traders.

Areas for improvement

Self-classification mechanism not effective

4.13 Audit notes that the DSD has made good efforts to identify TES-omission cases by examining whether TES has been correctly levied on newly licensed food premises and selected trades with high water-consumption accounts. In the three years from 2010-11 to 2012-13, as a result of the DSD's investigation efforts, it had identified 2,647 TES-omission cases and recovered TES of $12.3 million from the pertinent traders (see Table 3).

Table 3

TES recovered resulting from DSD's investigation efforts (2010-11 to 2012-13)

Financial year	TES chargeable accounts identified (No.)	TES recovered ($ million)
2010-11	967	4.3
2011-12	921	6.3
2012-13	759	1.7
Total	2,647	12.3

Source: DSD records

4.14 Audit is concerned that the present self-classification mechanism may not be effective in administering the TES system, as evidenced by the fact that 72% of the water accounts of newly licensed food premises which had been classified as non-TES chargeable were in fact TES chargeable (see para. 4.8). For example, Audit examination revealed that some restaurant and food processing traders had classified their businesses conducted at the related premises as commercial offices, laundries and "office, accounting and computing machinery". Moreover, Audit notes that there was no penalty clause provided in the Sewage Services Ordinance relating to the provision of false information on business classifications, and as a

result, the DSD had not taken any prosecution actions against TES traders who had provided false information on their business classifications in the water-account application forms.

4.15 In Audit's view, the high percentage of TES-omission cases may be the result of:

(a) TES traders' lack of knowledge of the TES requirements; and

(b) the lack of deterrence on TES traders who knowingly provide false information on their business classifications.

4.16 In view of the high percentage of TES-omission cases, the DSD needs to, in collaboration with the WSD, enhance the publicity efforts on TES traders (particularly restaurant and food processing traders) to remind them of the need to provide correct business-classification information to the DSD and the WSD. The ENB and the DSD also need to seek legal advice on whether prosecution actions can be taken against TES traders who are proved to have provided false business-classification information to the DSD with an intention of evading TES. In the event that such prosecution action under the present laws is not practicable, the ENB and the DSD need to consider seeking legislative support to make amendments to the Sewage Services Ordinance to provide appropriate penalty clauses.

Insufficient guidance on classifying TES-related businesses

4.17 The DSD mainly relies on the business-classification information provided by TES traders (at the time of applying for new water accounts) to levy TES on the pertinent water accounts (see para. 4.2). However, Audit notes that the WSD has not made it clear in the water-account application form that the business classification information will be used for determining whether a trader will be charged TES. Instead, an applicant is only requested to choose 1 of the 102 business classifications that "corresponds most precisely to the account category at the service address". Of the 102 business classifications, 30 are chargeable to TES. However, these 30 TES-related business classifications are not explicitly made known in the application form. In the circumstance, a trader may find more than one business classification that matches his business and may select a non-TES-related classification in the application form even though he will be operating a TES-related business.

4.18 For example, a cafe trader may find his business at the same time belongs to the business classifications of "Restaurants — other eating places", "Other food products", "Retail shop" and "Miscellaneous services/vacant", and haphazardly selects any one of the four classifications in the application form. In this case, the first business classification is TES chargeable but the remaining three are not. In Audit's view, the DSD needs to, in collaboration with the WSD, require water-account applicants to declare in the application form whether or not their businesses are chargeable to TES according to the Sewage Services (Trade Effluent Surcharge) Regulation, and, if in the affirmative, select 1 of the 30 TES business classifications in the application form.

DSD's examination not covering food premises licensed before 2005

4.19 Since May 2005, the DSD has requested the FEHD to periodically provide it with information of newly licensed food premises for examination. In Audit's view, the DSD has made good efforts in tackling TES omissions by focusing detection efforts on newly licensed food premises. However, based on the FEHD's records, as of June 2013, there were 7,692 licensed food premises which had been in operation before May 2005. Moreover, most of these 7,692 food premises have not been examined by the DSD with respect to the correctness of their business classifications for TES purposes.

4.20 Of these 7,692 food premises, Audit selected 70 for examination and found that 9 (13% — Note 13), which had originally been registered as non-TES trade accounts, were in fact chargeable to TES. The other 61 food premises had been correctly registered as TES accounts. Audit considers that the DSD's examination of these 7,692 food premises may help identify food premises involving TES omissions.

4.21 In Audit's view, the DSD needs to conduct examination of these 7,692 licensed food premises with a view to identifying TES-omission cases, and take action to recover TES from the pertinent traders.

Note 13: *In response to Audit examination results, the DSD conducted site visits to these 9 premises and confirmed that they were operating TES trades and should therefore be chargeable to TES.*

TES not levied on some unlicensed food premises

4.22 Under the Food Business Regulation of the Public Health and Municipal Services Ordinance (Cap. 132X), a person who operates a food business needs to apply for a licence from the FEHD (Note 14). In the three years from 2010 to 2012, there were 7,961 convicted cases relating to premises operating as unlicensed restaurants or food factories (see Table 4).

Table 4

Convicted cases of unlicensed restaurants or food factories (2010 to 2012)

Year	Convicted cases		
	Unlicensed restaurant (No.)	Unlicensed food factory (No.)	Total (No.)
2010	1,577	1,078	2,655
2011	1,586	694	2,280
2012	2,135	891	3,026
Total	5,298	2,663	7,961

Source: FEHD records

4.23 In Audit's view, some of the unlicensed restaurants and food factories might not have been levied TES. The DSD needs to request the FEHD to provide it with information of convicted cases of unlicensed restaurants or food factories, and take necessary follow-up actions with a view to identifying TES-omission cases and recovering TES from the pertinent traders.

Note 14: *Under the Ordinance, any person who operates a food business without a licence granted by the FEHD commits an offence and is liable on summary conviction to a fine of $50,000, imprisonment for six months and, where the offence is a continuing one, an additional fine of $900 for each day during which the offence has continued.*

TES not levied on catering services operated by some private clubs

4.24 Some private clubs licensed by the Home Affairs Department (HAD) under the Clubs (Safety of Premises) Ordinance (Cap. 376 — Note 15) also provide catering services for their members. Under this Ordinance and the Food Business Regulation, these licensed private clubs serving food to their members and guests are exempt from the requirement of obtaining a restaurant licence from the FEHD. As of June 2013, there were 672 licensed private clubs.

4.25 According to the DSD, a business is regarded as operating catering services for TES levying purposes if:

(a) there are food preparation and cooking activities inside the pertinent premises;

(b) the actual business operation includes the provision of seating places for customers to consume food inside the premises; and

(c) it is operated as a trade business (Note 16).

4.26 In June 2013, Audit selected 50 (7%) of the 672 licensed private clubs for examination. Of these 50 licensed private clubs, Audit noted that 17 (34% of 50 clubs) had not been levied TES. With reference to the DSD's criteria as stated in paragraph 4.25, Audit's site visits outside the premises of these 17 private clubs and Internet searches revealed that 11 (65% of 17 clubs) of them might be providing catering services and chargeable to TES. In August 2013, the DSD informed Audit that these 11 private clubs should be chargeable to TES.

Note 15: *Under the Ordinance, the HAD may issue a Certificate of Compliance to a private club which is formed for providing facilities to its members for social and recreation purposes. The Certificate is renewable every year.*

Note 16: *According to the DSD, a restaurant of a private club providing catering services without making any profit should not be chargeable to TES, such as a canteen for staff provided with food which is free of charge, or food which is being charged only for recovering the cost of the food provided.*

4.27 Audit notes that the DSD had not conducted examinations of licensed private clubs having non-TES accounts with a view to identifying TES-omission cases. In Audit's view, the DSD needs to conduct such examinations.

DSD's examination not covering some non-TES trade accounts with high water consumption records

4.28 In Audit's view, the DSD has made good efforts in tackling TES-omission cases by focusing detection efforts on non-TES trade accounts having high water-consumption records in the "Retail shop" and "Other food products" trades (see paras. 4.10 to 4.12). However, Audit notes that, apart from these two trades, two other business classifications (namely "Miscellaneous services/vacant" and "Cleansing and dust suppression for private use") may warrant the DSD's examination (see Table 5). Therefore, the DSD should consider extending the coverage of its examination of non-TES trade accounts having high water-consumption records to include these two trade categories.

Table 5

Business classifications with significant TES omissions identified by the DSD (2012-13)

Business classification	Account (No.)	TES recovered ($)
(a) Retail shop	240	854,881
(b) Miscellaneous services/vacant	65	240,399
(c) Cleansing and dust suppression for private use	37	185,001
(d) Other food products	24	159,418
Total	366	1,439,699

Source: Audit analysis of DSD records

Reassessment of TES rates

4.29 Under the Sewage Services (Trade Effluent Surcharge) Regulation, a TES trader may apply for:

(a) ***Reassessment of COD value.*** A trader may apply for a reduced TES rate levied on his business if he can demonstrate that the pollution level of his sewage discharge is lower than the prescribed generic COD value of his trade (see Appendix A). He may appoint at his expense an accredited laboratory to conduct an assessment of the pollution level of his sewage discharge in accordance with the Technical Memorandum issued under the Sewage Services Ordinance; and

(b) ***Reassessment of discharge factor.*** A trader may apply for a reassessment of the discharge factor for his business if he can demonstrate that the volume of sewage discharge is not more than 85% of the TES chargeable volume of water supply (Note 17). In processing an application, DSD inspectors will conduct sample checks to ascertain the volume of sewage discharge of an applicant's business.

4.30 Under the Regulation, if the DSD grants approvals for a reduced TES rate (see para. 4.29(a)) and a reassessed discharge factor (see para. 4.29(b)) for a business, the approvals will be valid for three years. The Regulation does not have provisions for revoking the approvals during the three-year period.

4.31 As of March 2013, there were 451 and 35 trade water accounts which had been granted reduced TES rates and reassessed discharge factors respectively. In 2012-13, the reduction in TES revenue resulting from the grant of reduced TES rates and reassessed discharge factors were $31.4 million and $2.9 million respectively.

Note 17: *Under the Sewage Services (Trade Effluent Surcharge) Regulation, a discharge factor on the volume of water supply is granted to some trades for TES collection purposes on the grounds that their volume of sewage discharge is lower than that of water supply. For example, a discharge factor of 80% is granted to restaurants.*

Areas for improvement

Inadequacies in DSD's laboratory visits

4.32 According to the DSD's inspection guidelines, upon receipt of an application for a reduced TES rate, inspectors of the Operation Section of the SS Branch will pay visits to the trade premises to observe the sewage sampling work conducted by the applicant's appointed laboratory. The DSD inspectors will also pay visits to the pertinent accredited laboratory to observe the sewage sample preparation and testing procedures, and complete a checklist for the purpose. The DSD's laboratory may also conduct independent tests on some sewage samples collected. If the DSD is satisfied with the testing results of the sewage pollution levels, it will grant approval for a reduced TES rate, and the applicant needs to continue to implement the related sewage treatment measures throughout the three-year validity period.

4.33 In 2011-12 and 2012-13, the DSD granted approvals to 184 business applications for reduced TES rates. Of these 184 cases, Audit selected 50 cases (which involved significant TES-rate reductions) for examination. Audit examination revealed that of these 50 cases:

(a) DSD inspectors had not conducted any laboratory visits in 30 cases (60%); and

(b) of the remaining 20 cases, the DSD inspectors had not carried out in 10 cases (50%) all the necessary checks as required under the pertinent checklists in accordance with DSD guidelines (see Table 6).

Table 6

DSD actions in 20 laboratory visits

Observing laboratory staff's action to unseal samples in laboratory	Observing laboratory staff's action to mix samples collected from different time intervals	Observing laboratory staff's action to prepare samples for testing in accordance with laid-down procedures	Visits complying with one or more of the 3 observation procedures (No.)
✓	✓	✓	10
✓	×	×	1
✓	✓	×	5
×	✓	×	2
×	✓	✓	2
		Total	20

Source: Audit analysis of DSD records

4.34 In August 2013, the DSD informed Audit that:

(a) DSD inspectors were not required to carry out laboratory visits in all cases involving applications for TES-rate reductions;

(b) since the independent laboratories responsible for carrying out the COD tests were all accredited under the Hong Kong Laboratory Accreditation Scheme (HOKLAS — Note 18), they were trustworthy and were governed by established procedures for ensuring the quality of test results. Checking the work of HOKLAS accredited laboratories was not a role of the DSD. The DSD only conducted laboratory visits occasionally to monitor the COD reassessments; and

Note 18: *HOKLAS is an accreditation scheme operated by the Hong Kong Accreditation Service, which is headed by the Commissioner for Innovation and Technology.*

(c) the DSD's investigations relating to Audit's observations in Table 6 revealed that:

(i) in one case, the full set of samples collected was incomplete and the laboratory did not proceed with the testing;

(ii) in some cases, the laboratories did not perform the required work procedures during DSD inspectors' visits; and

(iii) in some cases, DSD inspectors were not assigned to observe the sample unsealing procedure according to DSD rosters for inspectors.

4.35 Audit notes that the DSD has not issued any guidelines on the frequency of laboratory visits by DSD inspectors in processing applications for reduced TES rates. In Audit's view, such guidelines should be issued. The DSD also needs to issue guidelines on follow-up actions by DSD inspectors if they cannot conduct all inspection procedures during a laboratory visit. The DSD also needs to conduct a review of the effectiveness of laboratory visits conducted by DSD inspectors, having regard to DSD requirement for applicants to comply with the testing procedures laid down in the Technical Memorandum of the Sewage Services Ordinance.

TES Traders' sewage treatment measures not closely monitored

4.36 In July 2011, the DSD issued "Guidelines on application for reassessment of COD" to TES traders relating to their applications for reassessment of TES rates. According to the Guidelines, in order to monitor the sewage treatment measures implemented by TES traders who have been granted reduced TES rates throughout the three-year validity period, the DSD Operation Section will:

(a) send inspectors to collect samples of the sewage discharge of the pertinent businesses for testing to ascertain whether the sewage discharge meets the approved conditions; and

(b) require pertinent businesses to submit maintenance records of their sewage treatment facilities to the DSD six months after approval and every nine months thereafter.

4.37 As of June 2013, 192 businesses (Note 19) which had been granted reduced TES rates were subject to the control measures stated in paragraph 4.36. During the two years from July 2011 to June 2013, the DSD had carried out seven surprise visits to examine the implementation of sewage treatment measures at the pertinent traders' premises. Audit examination revealed that:

(a) the DSD had not issued any internal guidelines on the frequency of such surprise visits;

(b) during the seven surprise visits, DSD inspectors had not conducted any sample collection and testing, at variance with the requirements under DSD guidelines (see para. 4.36 (a)); and

(c) from July 2011 to April 2013, the DSD issued letters to require 121 pertinent businesses to submit to the DSD maintenance records of their sewage treatment facilities. However, up to June 2013, 21 (17%) of 121 businesses had not duly submitted maintenance records to the DSD. Of the 100 businesses which had submitted maintenance records, 27 had not provided all the records as required.

In Audit's view, the DSD needs to strengthen efforts to address the above issues.

4.38 In August 2013, the DSD informed Audit that:

(a) effluent strength was largely dependent on the sewage treatment method adopted. If an applicant maintained the same treatment method and frequency throughout the three-year validity period, the effluent strength of the sewage during the period should be similar to that at the time of the application for TES reduction; and

(b) the DSD might conduct sample tests but it was not a requirement. The reasons for the DSD not collecting any trade-effluent samples from the pertinent premises during surprise inspections included:

Note 19: *A business may have more than one water account.*

(i) since the sample-taking work would take a full day, any surprise element would be lost;

(ii) the DSD did not want to disrupt the normal operation of the businesses; and

(iii) alternative administrative measures were in place to monitor the kitchen practices of restaurants and their maintenance of sewage treatment facilities. In case of any non-compliance with DSD requirements as revealed in the maintenance records submitted to the DSD, a business needed to provide a satisfactory explanation before his application for renewal of TES reduction would be processed.

4.39 In Audit's view, the DSD needs to collect sewage samples from businesses that have been granted TES reductions for testing in accordance with DSD guidelines (see para. 4.36). This practice will help the DSD assess the magnitude of the problem of TES traders not complying with the DSD's requirements during the three-year validity period for TES reductions. Based on such information, the DSD can make assessment of the need to strengthen controls over the issue (see para. 4.40). This practice will also provide deterrence on TES traders to induce them to comply with DSD requirements during the three-year validity period.

No provisions for revoking three-year validity period for reduced TES rates

4.40 The Sewage Services Ordinance and the Sewage Services (Trade Effluent Surcharge) Regulation have no provisions for the DSD to revoke a reduced TES rate granted to a business during the three-year validity period. Audit is concerned that this arrangement is not effective in inducing pertinent traders to take measures to prevent deterioration of the pollution level of their sewage discharge after the grant of reduced TES rates. Therefore, the DSD needs to consider seeking legislative support to amend the related Regulation to provide a clause for revoking, where necessary, the reduced TES rates granted to traders during the three-year validity period.

Audit recommendations

4.41 **Audit has *recommended* that the Director of Drainage Services should:**

Actions to identify TES-omission cases

(a) **in collaboration with the Director of Water Supplies, enhance publicity efforts on TES traders (particularly restaurant and food processing traders) to remind them of the need to provide correct business-classification information to the DSD and the WSD;**

(b) **seek legal advice on whether prosecution actions can be taken against TES traders who are proved to have provided false business-classification information to the DSD with an intention of evading TES;**

(c) **consider seeking legislative support to make amendments to the Sewage Services Ordinance for providing appropriate penalty clauses to deter TES traders from intentionally providing false business-classification information to the WSD and the DSD for the purpose of evading TES;**

(d) **in collaboration with the Director of Water Supplies, make amendments to the water-account application form to the effect that applicants are required to declare in the form as to whether or not their businesses are chargeable to TES according to the Sewage Services Ordinance;**

(e) **with a view to identifying TES-omission cases and taking action to recover TES from the pertinent traders:**

(i) **conduct examinations of 7,692 licensed food premises which had been in operation before May 2005;**

(ii) **request the FEHD to provide the DSD with information of convicted cases of unlicensed restaurants or food factories for examination; and**

(iii) **conduct examinations of all licensed private clubs having non-TES accounts;**

(f) **consider including the business classifications of "Miscellaneous services/vacant" and "Cleansing and dust suppression for private use" in the DSD's examination of non-TES trade accounts with high water-consumption records;**

Reassessment of TES rates

(g) **issue guidelines on the frequency and arrangements for conducting laboratory visits by DSD inspectors in processing applications for reduced TES rates;**

(h) **conduct a review of the effectiveness of laboratory visits conducted by DSD inspectors;**

(i) **for trade premises that have been granted reduced TES rates, consider issuing guidelines on:**

(i) **the frequency of DSD surprise visits to examine the implementation of sewage treatment measures; and**

(ii) **DSD sample collection frequency and testing procedures to assess the pertinent traders' effluent strength;**

(j) **take measures to ensure that pertinent traders will submit maintenance records of their sewage treatment facilities to the DSD in a complete and timely manner; and**

(k) **consider seeking legislative support to amend the Sewage Services (Trade Effluent Surcharge) Regulation for providing a clause for revoking, where necessary, the reduced TES rates granted to traders during the three-year validity period.**

Response from the Administration

4.42 The Director of Drainage Services agrees with the audit recommendations. He has said that the DSD will:

Action to identify TES-omission cases

(a) in collaboration with the WSD, enhance publicity efforts on traders to remind them of the need to provide correct business-classification information to the DSD and the WSD;

(b) seek legal advice from the Department of Justice on the handling of cases mentioned in paragraph 4.41(b);

(c) in collaboration with the WSD, take administrative measures, such as enhancing publicity efforts and revising the water-account application form to improve the accuracy of the business-classification information provided by traders. The DSD will evaluate the effectiveness of these administrative measures and consider the need to make relevant legislative amendments;

(d) in collaboration with the WSD, prepare a revised water-account application form with a declaration of whether the pertinent business is chargeable to TES;

(e) seek assistance from the FEHD in providing information of licensed food premises which had been in operation before May 2005 for identifying TES-omission cases;

(f) seek assistance from the FEHD in providing information of convicted cases of unlicensed restaurants or food factories for identifying TES-omission cases;

(g) seek assistance from the HAD in providing information of licensed private clubs having non-TES accounts for identifying TES-omission cases;

(h) continue to examine non-TES trade accounts with high water-consumption records for identifying potential TES accounts and consider including additional business classifications for examination purposes after reviewing the existing examination scope;

Reassessment of TES rates

(i) conduct a review of the effectiveness of laboratory visits currently conducted by DSD inspectors. The review findings will also be used for developing guidelines on the frequency and arrangements for conducting such visits;

(j) step up existing administrative measures, including the issue of guidelines on the frequency of the DSD's surprise visits, to ensure that traders would implement sewage treatment measures properly;

(k) step up existing administrative measures to ensure that traders would continue to implement appropriate measures to maintain the pollution level of their sewage discharge. The DSD will closely monitor the effectiveness of the enhanced measures and consider the need to issue guidelines on sample collection and testing procedures;

(l) step up existing administrative measures to ensure the timely submission of maintenance records by pertinent traders;

(m) step up existing administrative measures to ensure that traders would maintain their pollution level after the granting of reduced TES rates; and

(n) closely monitor the effectiveness of the enhanced measures and consider the need to make relevant legislative amendments.

4.43 The Director of Water Supplies agrees with the audit recommendations related to the WSD in paragraph 4.41(a) and (d).

PART 5: COMPILATION OF MANAGEMENT INFORMATION

5.1 This PART examines the compilation of management information for the SSCS.

Management information

5.2 The DSD mainly manages the SSCS through the CCBS of the WSD. Salient information for supporting the DSD's management of the SSCS include:

(a) Lists of Unsewered Areas (see para. 3.4(b));

(b) Lists of Newly Connected Premises (see para. 3.5(c));

(c) Weekly New Accounts Reports of new water accounts having non-SC status produced by the CCBS (see para. 3.7); and

(d) business classification information of non-domestic water accounts for TES collection purposes (see para. 4.2).

Some management information not readily available

5.3 Audit notes that the following management information, which will facilitate DSD management in monitoring the SSCS, is not readily available:

(a) reports on progress of actions taken to recover SC and TES from outstanding accounts;

(b) ageing analysis of recovery of SC and TES; and

(c) frequencies of DSD inspections carried out on premises relating to suspected SC and TES omissions.

5.4 In Audit's view, the DSD needs to take action to provide relevant and useful management reports.

Audit recommendations

5.5 **Audit has *recommended* that the Director of Drainage Services should, for management purposes, take measures to:**

(a) **in collaboration with the Director of Water Supplies, provide periodical reports on:**

(i) **progress of actions taken to recover SC and TES from outstanding accounts; and**

(ii) **ageing analysis of recovery of SC and TES; and**

(b) **provide periodical reports on frequencies of DSD inspections carried out on premises relating to suspected SC and TES omissions.**

Response from the Administration

5.6 The Director of Drainage Services agrees with the audit recommendations. He has said that additional quarterly reports and statistics will be provided for management purposes.

5.7 The Director of Water Supplies agrees with the audit recommendation related to the WSD in paragraph 5.5(a).

Appendix A

(paras. 1.4(b), 1.6, 4.2 and 4.29(a) refer)

Trade effluent surcharges of 27 trades (August 2013)

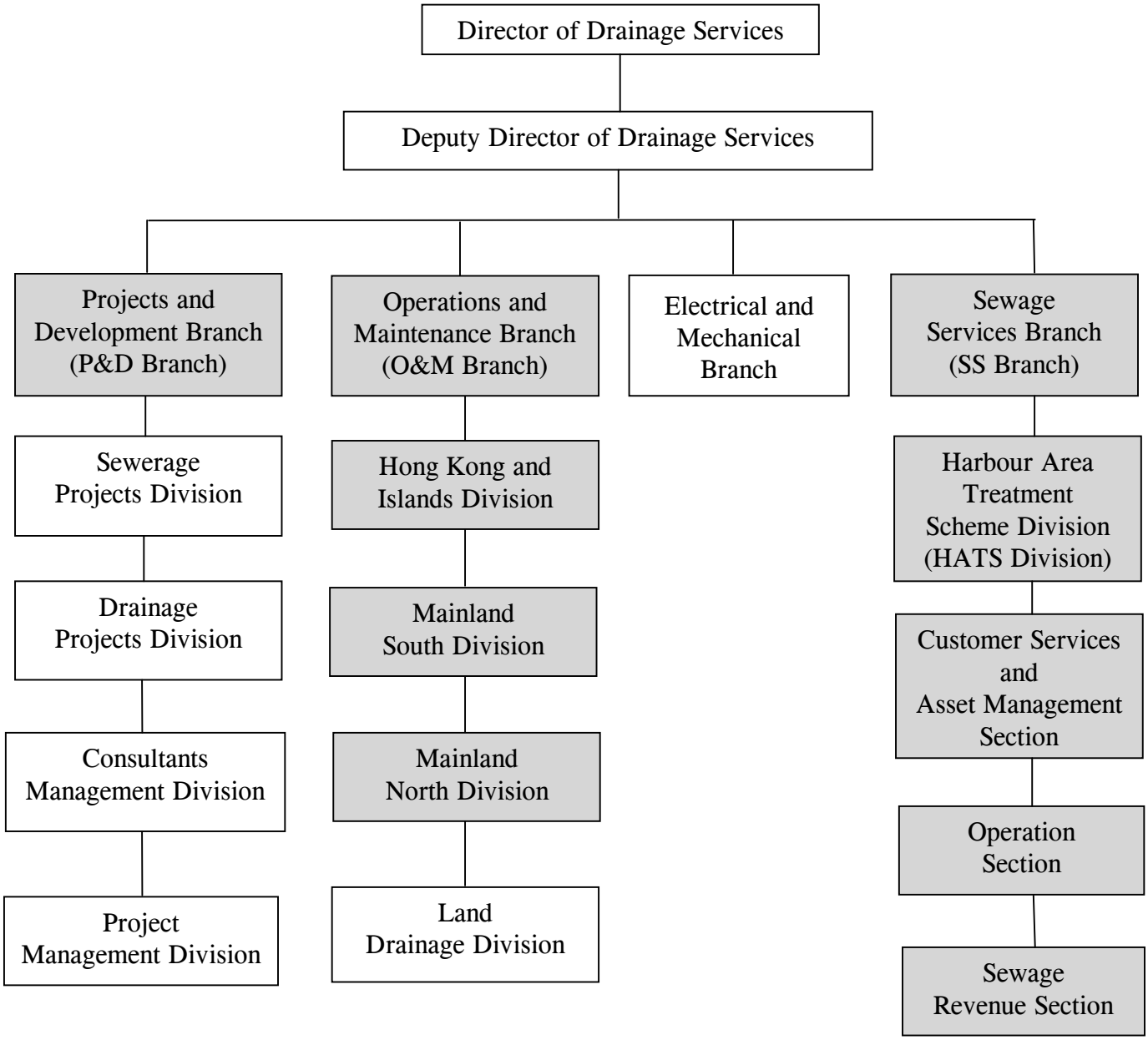
	Trade	Generic COD value (g/m^3)	TES rate ($/m^3$)
1	Yarn sizing	2,000	4.51
2	Washing new garments, excluding laundries	566	0.41
3	Bleaching and dyeing of knitted fabric (Note)	665	0.41
4	Bleaching and dyeing of woven fabric (Note)	1,053	1.20
5	Knit outerwear (Note)	566	0.41
6	Wearing apparel other than knit outerwear	566	0.41
7	Spinning cotton	570	0.41
8	Soap and cleaning preparations, perfumes, cosmetics	2,000	4.51
9	Medicines	2,000	4.51
10	Paints, varnishes and lacquers	1,000	1.38
11	Basic industrial chemicals	677	0.76
12	Tanneries and leather finishing	807	0.76
13	Pulp, paper and paperboard	1,870	4.88
14	Soft drinks and carbonated waters industries (Note)	826	0.47
15	Breweries and manufacture of malt liquor (Note)	2,000	4.51
16	Distilling, rectifying and blending spirits (Note)	2,000	4.51
17	Cocoa, chocolate and sugar confectionery	2,000	4.51
18	Vermicelli, noodles, and similar farinaceous products	2,000	4.51
19	Bakery products	2,000	3.92
20	Grain mill products	1,521	2.77
21	Vegetable oil, peanut oil, peppermint oil and aniseed oil	1,320	2.48
22	Canning, preserving and processing of fish and crustaceans	1,141	1.78
23	Canning and preserving fruit and vegetables	2,000	3.41
24	Dairy products	2,000	4.51
25	Slaughtering, preparing and preserving meat	1,129	1.74
26	Soy and other sauces	2,000	4.51
27	Restaurants (Note)	1,630	3.05

Source: *Sewage Services (Trade Effluent Surcharge) Regulation*

Note: *For these seven trades, TES is chargeable based on 80% of the water supply because these trades produce less volume of sewage than that of water supply.*

Appendix B
(paras. 1.8 and 3.4 refer)

Drainage Services Department
Organisation chart
(August 2013)



Source: *DSD records*

Remarks: *P&D Branch and HATS Division of SS Branch are collectively referred to as the Project Divisions.*

Appendix C
(para. 4.2 refers)

102 business classifications in water-account application form (August 2013)

1	Metal ore mining	18	Soft drinks and carbonated water industries	35	Textile finishing and packing, napping
2	Mining (other)	19	Tobacco manufacturing	36	Other textiles (excluding upholstery)
3	Slaughtering, preparing and preserving meat	20	Wearing apparel other than knit outerwear	37	Wood and cork products except furniture
4	Processing of animal products	21	Gloves, headgear, wearing apparel (other), napkins, embroidery, wristwatch bands (other than metal), and upholstery	38	Furniture and fixtures, except primarily of metal
5	Dairy products	22	Tanneries and leather finishing	39	Pulp, paper and paperboard
6	Canning and preserving of fruit and vegetables	23	Products of leather and leather substitutes (excluding footwear and clothing), and handbags (excluding rattan, straw and plastic bags)	40	Paper products
7	Canning, preserving and processing of fish and crustaceans	24	Footwear, except rubber, plastic and wooden footwear	41	Printing, publishing and allied industries, book binding, stationery and celluloid
8	Vegetable oil, peanut oil, peppermint oil and aniseed oil	25	Spinning cotton	42	Basic industrial chemicals
9	Grain mill products	26	Texturizing, spinning (excluding cotton), weaving, knitting (excluding outerwear), hosiery, knit underwear	43	Paints, varnishes and lacquers
10	Bakery products	27	Knit outerwear	44	Medicines
11	Vermicelli, noodles and similar farinaceous products	28	Textile stencilling and printing	45	Soap and cleaning preparations, perfumes, cosmetics
12	Cocoa, chocolate and sugar confectionery	29	Bleaching and dyeing of yarn	46	Other chemicals and chemical products
13	Ice manufacture (excluding dry ice)	30	Bleaching and dyeing of woven fabric	47	Products of petroleum and coal
14	Soy and other sauces	31	Bleaching and dyeing of knitted fabric	48	Rubber products
15	Other food products	32	Bleaching and dyeing of garments	49	Plastic products
16	Distilling, rectifying and blending spirits	33	Washing new garments (excluding laundries)	50	Pottery, china and earthenware
17	Breweries and manufacture of malt liquors	34	Yarn sizing	51	Glass and glass products (excluding spectacles and optical lenses)

Appendix C
(Cont'd)
(para. 4.2 refers)

52	Structural clay products	69	Professional and scientific, measuring and controlling equipment (other), photographic and optical goods	86	Shipping water supply
53	Cement	70	Offensive industries (other)	87	Storage
54	Concrete mixing	71	Buttons, bobbins, umbrellas, mosquito nets, sails and flags	88	Commercial offices
55	Lime	72	Wigs and hair products	89	Private academic and sports institution
56	Plaster	73	Manufacturing industries (other)	90	Private welfare activities
57	Non-metallic mineral products (other)	74	Utilities, transport, car parks, tunnels, travel, communication	91	Private clubs, institutions and religious organisations (other)
58	Basic metal industries	75	Construction, decoration, repair and maintenance	92	Hospitals and Clinics
59	Buffing, polishing and electroplating	76	Wholesale	93	Barber and beauty shops
60	Other fabricated metal products	77	Retail shop of any kind	94	Bath houses and massage parlours
61	Office, accounting and computing machinery	78	Import/export	95	Laundries
62	Radio, television, communication equipment and apparatus	79	Restaurants-Chinese	96	Private fountains
63	Electronic parts and components	80	Restaurants-non-Chinese	97	Private swimming pools and boating ponds
64	Electrical appliances and houseware, electronic toys and electrical workshops	81	Restaurants-fast food shops	98	Cleansing and dust suppression for private use
65	Machinery, equipment, apparatus, parts and components (other)	82	Restaurants-other eating places	99	Gardens, lawns and tennis courts for private use
66	Land intensive and large scale heavy industries	83	Hotels	100	Washing vehicles for private use
67	Manufacture, assembly and repair of motor vehicles, motor cycles and bicycles	84	Boarding houses	101	Air-conditioning for private use
68	Manufacture and assembly of transport equipment (other)	85	Ocean-going shipping supply	102	Miscellaneous services/vacant

Source: DSD and WSD records

Note: 30 business classifications (as shaded) belong to 27 TES trades, where 4 business classifications (see items 79 to 82) belong to the restaurant trade.

Appendix D

Acronyms and abbreviations

Audit	Audit Commission
CCBS	Customer Care and Billing System
COD	Chemical oxygen demand
DSD	Drainage Services Department
EA Panel	Panel on Environmental Affairs
ENB	Environment Bureau
EPD	Environmental Protection Department
FEHD	Food and Environmental Hygiene Department
FSTB	Financial Services and the Treasury Bureau
g/m^3	gram per cubic metre
HAD	Home Affairs Department
HATS	Harbour Area Treatment Scheme
HOKLAS	Hong Kong Laboratory Accreditation Scheme
LegCo	Legislative Council
m^3	cubic metre
O&M Branch	Operations and Maintenance Branch
P&D Branch	Projects and Development Branch
SC	Sewage charge
SMPs	Sewerage Master Plans
SS Branch	Sewage Services Branch
SSCS	Sewage Services Charging Scheme
TES	Trade effluent surcharge
WSD	Water Supplies Department

CHAPTER 9

Innovation and Technology Commission

Innovation and Technology Fund: Overall management

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

INNOVATION AND TECHNOLOGY FUND: OVERALL MANAGEMENT

Contents

INNOVATION AND TECHNOLOGY FUND: OVERALL MANAGEMENT

Executive Summary

1. Innovation and technology are drivers of economic development and competitiveness. The Government attaches great importance to the significant contribution of innovation and technology to the development of Hong Kong's economy and industries. It launched the Innovation and Technology Fund (ITF) in November 1999 to provide funding support for research and development (R&D) projects that contribute to innovation and technology upgrading in manufacturing and service industries. Up to 30 June 2013, approved ITF project funds amounted to $7.5 billion. The ITF has four programmes, namely the Innovation and Technology Support Programme (ITSP), the Small Entrepreneur Research Assistance Programme (SERAP), the University-Industry Collaborative Programme and the General Support Programme. ITSP and SERAP projects had accounted for 90% of the ITF funds. In April 2006, the Government established five R&D centres to coordinate R&D efforts in selected technology focus areas. The Innovation and Technology Commission (ITC) is responsible for administering the ITF.

2. The Audit Commission (Audit) has recently conducted a review of the ITF. The audit findings are contained in two separate Audit Reports: (a) ITF: Overall management (the subject matter of this Chapter); and (b) ITF: Management of projects (Chapter 10 of the Director of Audit's Report No. 61).

Review of ITF and performance monitoring

3. ***Review of ITF.*** In July 1999, when seeking the Finance Committee (FC) of the Legislative Council (LegCo)'s approval for the establishment of the ITF, the Administration pledged that it would: (a) review the ITF periodically, say, once every three years; and (b) conduct impact studies for selected projects to examine the projects' accomplishment in the longer term. Audit however noted that since 2004, apart from the conduct of a mid-term review in 2009 and a comprehensive review in 2011 of the five R&D centres, the ITC had not conducted an overall

comprehensive review or impact studies of the ITF as the Administration had pledged. By November 2013, the ITF would have operated for 14 years. Audit considers that the ITC needs to conduct the comprehensive review of the ITF without delay, and should work out a timetable with a target completion date for the review, so that the ITF can be timely fine-tuned to meet the changing needs of the community (paras. 2.4 to 2.10).

4. ***Post-completion evaluation of ITSP projects.*** The ITC conducts a post-completion evaluation for each project six months after project completion. Audit examined 25 ITSP R&D centre projects and noted that: (a) 13 projects had not been evaluated after project completion on their performance; and (b) for all the remaining 12 projects which had been evaluated, the evaluation results indicated that there was no "technology breakthrough" or "successful commercialisation" and the results of only two projects had been adopted by industry, but eight of these projects were still rated as "successful" by the ITC. Audit also considers that the conduct of a post-completion evaluation after a period of six months may be too soon and there may be a need for conducting follow-up evaluation. The ITC needs to review the appropriateness of the timeframe and improve its methodology adopted for post-completion evaluation of ITSP projects (paras. 2.11 to 2.13).

5. ***Performance measurement at programme level.*** The ITC measures the performance of the ITF by reporting: (a) in the Government's annual Estimates performance indicators (e.g. the number of applications received and processed) for each programme (see para. 1); and (b) in the annual progress report submitted to the LegCo Panel on Commerce and Industry performance indicators (e.g. the number of new projects) for each R&D centres. Audit performed a research of the performance indicators used by overseas R&D institutes and found that the performance indicators used by the ITC could be enhanced to provide more comprehensive information on the performance of the ITF at programme level (paras. 2.16 and 2.17).

Performance of R&D centres

6. The R&D centres had not been able to achieve the financial performance targets set in 2005. In June 2005, when seeking approval for the allocation of $273.9 million (excluding the allocation to the R&D Centre for information and communications technologies which was separately subvented) from the ITF for

setting up the five R&D centres, the Government informed the FC that: (a) each R&D centre would have an initial term of operation of five years, after which it was expected to do so on a self-financing basis, counting on its ability to obtain adequate industry contribution and generate income to meet its operating cost; (b) the centres were expected to be able to have up to 40% contributions from the industry towards R&D project costs as they ramped up to the fifth year of operation; and (c) the projected operating expenditure for each R&D centre would represent on average 16% of their total R&D project costs (para. 3.4).

7. In June 2009, the Government sought the FC's approval for a further allocation of $369 million from the ITF to support the continued operation of the five R&D centres up to 2013-14. The centres' industry contribution target was drastically reduced from 40% to 15% pending future review. In May 2012, the Government again sought the FC's approval for another allocation of $275.3 million from the ITF to support the continued operation of the R&D centres. The industry contribution targets were further adjusted to: (a) for three centres, 20% for their second five-year period; and (b) for two centres which had not achieved the 15% target, 18% for the two years of 2011-12 and 2012-13 (paras. 3.6 and 3.7).

8. Audit conducted an assessment of the performance of individual R&D centres and noted that: (a) the centres' performance results had deviated significantly from the estimated position as set out in 2005 when the FC's approval was sought for their setting up; (b) it was opportune to review the level of industry contribution for the centres in the forthcoming comprehensive review of the ITF; and (c) the chance for the centres to achieve the self-financing target in the near future was remote. The ITC needs to critically review the operations of the centres and set more realistic performance targets for their operations (para. 3.19).

Commercialisation of ITF project results

9. ***Commercialisation of ITSP project results.*** The ITSP provides funding for midstream and downstream applied R&D projects. In the years from 2009-10 to 2012-13, total licence fee income collected per year by the five R&D centres altogether ranged from $0.2 million to $12 million, representing less than 1% to some 9% of the total R&D project costs for the year. Audit examined 15 ITSP R&D centre projects and noted that: (a) there were differences among R&D centres' practices in setting licence fees; (b) there were variations in income sharing arrangements between R&D centres and public research institutes, and Audit could

not ascertain the bases for determining the sharing arrangements; and (c) there was scope for improving the collection of licence fees. For ITSP non-R&D centre projects managed by the ITC, although ITF expenditure spent from 1999-2000 to 2012-13 amounted to $2.8 billion, the ITC did not have a system to capture commercialisation information on such projects (paras. 4.5, 4.6, 4.10, 4.14 and 4.15).

10. ***Commercialisation of SERAP project results.*** SERAP provides funding on a dollar-for-dollar matching basis to small technology-based and entrepreneur-driven companies to undertake R&D projects that have innovation and technology content and business potential. The maximum SERAP funding for each project is $6 million. Funding is recouped from the recipient company if the SERAP project is commercially successful, i.e. the company is able to generate revenue from the project or attract follow-on investment by a third party. Audit however found that, up to 31 May 2013, only $22.8 million had been recouped, representing 7% of the $334 million disbursed. Audit analysed 239 completed projects and noted that: (a) no recoupment was received for 145 projects (60%); and (b) 61 projects (26%) had low recoupment rates of 10% or less. The ITC needs to be more vigilant in tracking the revenue and investments received by recipient companies and take more initiatives in detecting suspected abuses and safeguarding the public money (paras. 4.19, 4.20, 4.22, 4.23 and 4.30).

Audit recommendations

11. **Audit recommendations are made in PART 5 of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Commissioner for Innovation and Technology should:**

Review of ITF and performance monitoring

(a) **conduct a comprehensive review of the ITF without delay and work out a timetable with a target completion date for the review (para. 5.6(a));**

(b) **review and improve the existing mechanism for conducting post-completion evaluation of ITSP projects, and take steps to establish a more structured and coordinated approach in assessing the effectiveness of the projects in achieving their R&D objectives (para. 5.6(b));**

(c) **review and improve the existing performance measurement of the ITF, including the setting of more performance targets, on how the ITF has contributed to the industry (para. 5.6(c));**

Performance of R&D centres

(d) **conduct a cost-effectiveness review of the five R&D centres, taking into account the performance results Audit identified (para. 5.8(a));**

(e) **conduct a review on the target level of industry contribution for the R&D centres, and review the feasibility of achieving the self-financing target for individual centres in the longer term (para. 5.8(b));**

(f) **set realistic performance targets, including quantitative and qualitative ones, on the operation of the R&D centres (para. 5.8(c));**

Commercialisation of ITF project results

(g) **in collaboration with the R&D centres, co-develop a set of principles and policies on the setting of licence fees, sharing and collection of licence fee income for both ITSP R&D centre projects and ITSP non-R&D centre projects (para. 5.10(a));**

(h) **set up a proper system to monitor and follow up on the commercialisation of ITSP non-R&D centre projects (para. 5.10(c));**

(i) **consider reporting regularly the progress of commercialisation of ITF project results to senior management of the ITC and the Steering Committee on Innovation and Technology (para. 5.10(d)); and**

(j) **step up the ITC's follow-up action on recoupment of the Government's contribution to SERAP projects (para. 5.10(e)).**

Response from the Administration

12. The Commissioner for Innovation and Technology welcomes the value for money audit of the ITF and agrees with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 Innovation and technology are drivers of economic development and competitiveness. They help improve the efficiency and performance of enterprises, which in turn contribute to the sustainable growth of the economy. The Government attaches great importance to the development of innovation and technology in Hong Kong. The Chief Executive of the Hong Kong Special Administrative Region has stressed in his 2013 Policy Address that the Government will focus on the development of the highly competitive sectors of the innovation and technology industries in the light of Hong Kong's strengths.

1.3 Over the years, the Government has been promoting research and development (R&D) and technology upgrading by:

(a) the funding of innovation and technology upgrading in industry under the Innovation and Technology Fund (ITF);

(b) the funding of research in higher education institutions via the University Grants Committee and the Research Grants Council's block grants or earmarked/indicated grants;

(c) the provision of technological infrastructure (such as the Hong Kong Science Park and the three Industrial Estates); and

(d) the conduct of other support work (e.g. nurturing human resource development and strengthening Mainland and international collaboration in science and technology).

1.4 In January 2004, the Government established a high-level Steering Committee on Innovation and Technology chaired by the Financial Secretary with

members from the relevant Government bureaux, academia, industry and R&D organisations. The Steering Committee is responsible for coordinating the formulation and implementation of innovation and technology policies, and ensuring greater synergy among different elements of the innovation and technology programmes. Its terms of reference include:

(a) advising on the formulation of policies to support the development of innovation and technology and the commercialisation of R&D deliverables;

(b) determining focuses and priorities;

(c) ensuring effective alignment, coordination and synergy among the stakeholders;

(d) reviewing, where necessary, the institutional arrangements for effective policy and programme implementation;

(e) advising on the allocation of resources among major elements of the innovation and technology programme to optimise their utilisation; and

(f) exploring means to attract investments from overseas in the technology sector.

Hong Kong's ranking in competitiveness and innovation

1.5 International organisations regularly assess and publish rankings on the competitiveness and innovation of economies in the world:

(a) in the 2013-14 Global Competitiveness Index published by the World Economic Forum, Hong Kong was ranked seventh among 148 economies worldwide; and

(b) in the 2013 Global Innovation Index published by INSEAD and its associates, Hong Kong was ranked seventh among 142 economies worldwide.

1.6 While Hong Kong achieved high rankings in the two indices, its rankings in the innovation and technology sub-components of the indices were modest. For example, Hong Kong was ranked 23rd in the innovation sub-component of the Global Competitiveness Index, behind Taiwan, Singapore and South Korea.

1.7 The ITF is an important Government scheme that provides financial support for R&D projects to enhance Hong Kong's innovation and technology development. By November 2013, it would have operated for 14 years.

Innovation and Technology Fund

Aim and funding

1.8 The ITF aims to provide funding support for projects undertaken by research institutes, local companies, universities, industry support organisations, etc. that contribute to innovation and technology upgrading in manufacturing and service industries, so as to increase productivity and enhance competitiveness. It was established as a statutory fund under section 29 of the Public Finance Ordinance (Cap. 2) by a resolution of the Legislative Council (LegCo) on 30 June 1999 (Note 1). In July 1999, the Finance Committee (FC) of LegCo approved the Government's proposal to inject $5 billion into the ITF. In November 1999, the ITF was launched. Any unexpended balance of the ITF is invested with the Exchange Fund, with investment income credited to the ITF. As at 30 June 2013, the fund balance of the ITF was $2.2 billion. Up to 31 March 2013, the following revenue had been received and expenditure incurred by the ITF:

Note 1: *In September 1998, the First Report of the Commission on Innovation and Technology recommended the establishment of the ITF to underline the Government's commitment to its policy and strategy for promoting innovation and technology, and to provide a secure source of funding for their implementation. The Commission recommended that the ITF should be used to finance projects that contributed to innovation and technology upgrading in both the manufacturing and service industries. The Chief Executive accepted the Commission's recommendations and pledged in his 1998 Policy Address an injection of $5 billion into the ITF.*

Table 1

Revenue and expenditure of ITF
(1999-2000 to 2012-13)

Particulars		Amount ($ million)
(a)	Setting up of ITF in November 1999	5,000
(b)	Revenue	
	— Investment income received from the Exchange Fund	3,490
	— Commercialisation income received from ITF projects	47
	— Refund of grants from ITF projects	393
		3,930
(c)	Expenditure (see breakdown in para. 1.14)	6,551
(d)	Closing balance as at 31 March 2013 ((a) + (b) – (c))	2,379

Source: Records of Treasury and Innovation and Technology Commission

Innovation and Technology Commission

1.9 The Financial Secretary is designated as the administrator of the ITF. He has delegated his power of fund administration to the Commissioner for Innovation and Technology of the Commerce and Economic Development Bureau (CEDB). The Commissioner heads the Innovation and Technology Commission (ITC), which is a department under the Communications and Technology Branch of the Bureau. Apart from promoting R&D, providing infrastructural support to facilitate technological upgrading and development of the industries and support to the industries, the ITC is responsible for processing applications of R&D projects and other ancillary projects of the ITF, disbursing funds to successful applicants, and monitoring the progress and achievements of approved projects under the ITF. It also oversees the performance of the R&D centres (see para. 1.11). As at 30 June 2013, the ITC had a headcount of 233 comprising 190 civil service posts and 43 non-civil service contract posts. For 2012-13, $181 million was paid from the general revenue of the Government to finance the ITC's day-to-day operation.

ITF programmes

1.10 The ITF has funded four programmes since 1999:

(a) ***Innovation and Technology Support Programme (ITSP):***

(i) this programme provides funding for midstream/downstream applied R&D projects under a three-tier funding framework;

(ii) the applicant should be:

- one of the five R&D centres (see para. 1.11);
- a designated local public research institute (e.g. local universities, the Hong Kong Productivity Council (HKPC) and the Vocational Training Council); or
- a private sector company; and

(iii) up to 30 June 2013, 1,430 projects had been approved involving $6,334.2 million (84% of the total approved funds for all ITF projects since its establishment in 1999);

(b) ***Small Entrepreneur Research Assistance Programme (SERAP):***

(i) this programme provides dollar-for-dollar matching grant for small technology-based enterprises to undertake projects that have innovation and technology content and business potential. The grant will be recouped if the project is able to attract follow-on investment or generate revenue;

(ii) the applicant should be a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32) with less than 100 employees in Hong Kong. It should not be a large company or a subsidiary of or significantly owned/controlled by a large company; and

(iii) up to 30 June 2013, 373 projects had been approved involving $427.8 million (6% of the total approved funds);

(c) ***University-Industry Collaboration Programme (UICP):***

(i) this programme provides funding to R&D projects undertaken by local universities in collaboration with private sector companies;

(ii) the applicant should be a private sector company incorporated in Hong Kong under the Companies Ordinance. It has to contribute no less than 50% of the project cost; and

(iii) up to 30 June 2013, 240 projects had been approved involving $273 million (4% of the total approved funds); and

(d) ***General Support Programme (GSP):***

(i) this programme provides funding for non-R&D projects that contribute to fostering an innovation and technology culture in Hong Kong (e.g. conferences, exhibitions and seminars);

(ii) an applicant should be an organisation, such as non-profit making trade or industry association, local university, public body or local unincorporated or incorporated company; and

(iii) up to 30 June 2013, 1,329 projects had been approved involving $475.4 million (6% of the total approved funds).

Up to 30 June 2013, the total approved amount for these four programmes was $7,510 million. Up to 31 March 2013, the actual expenditure was $6,551 million (see paras. 1.8 and 1.14). The difference was mainly due to the fact that funds were disbursed to projects by instalments based on their progress.

R&D centres

1.11 In 2004 (five years after the establishment of the ITF), the Government reviewed the development of innovation and technology and considered that since R&D projects were mainly initiated by individual researchers, they were not conducive to building the necessary technology focus. It therefore proposed to identify technology areas where Hong Kong had comparative advantages and the potential for meeting industry and market needs, and to establish R&D centres to drive and coordinate R&D efforts and promote commercialisation of R&D results in the selected technology areas. Following the public consultation exercise in 2004, in early 2005, the Government introduced a new strategic framework which aimed at a more focused approach to promoting innovation and technology development in five technology areas:

(a) automotive parts and accessory systems;

(b) logistics and supply chain management enabling technologies;

(c) nanotechnology and advanced materials;

(d) textiles and clothing; and

(e) information and communications technologies (ICT).

1.12 To take forward the strategic framework, in June 2005, the Government obtained the FC's approval to establish five R&D centres to undertake R&D projects in the five technology focus areas. In April 2006, the centres were set up. They were:

(a) Nano and Advanced Materials Institute (NAMI);

(b) Automotive Parts and Accessory Systems R&D Centre (APAS);

(c) Hong Kong Research Institute of Textiles and Apparel (HKRITA);

(d) Hong Kong R&D Centre for Logistics and Supply Chain Management Enabling Technologies (LSCM); and

(e) R&D Centre for ICT which was subsumed under the Hong Kong Applied Science and Technology Research Institute (ASTRI — Note 2).

1.13 As at 30 June 2013, the five R&D centres had in aggregate a workforce of 760, comprising research and administrative staff. Each of the centres is headed by a full-time Chief Executive Officer (CEO). The centres are hosted by local universities/ASTRI/HKPC. Their operating costs and the R&D projects undertaken by them are funded by the ITF, except the operating cost of the R&D Centre for ICT, which was funded by recurrent subvention provided to ASTRI from the Government's general revenue. Table 2 shows the operating expenditure of the R&D centres and approved R&D project costs managed by them.

Note 2: *ASTRI is an applied research institute wholly owned by the Government and was set up as a limited company in 2000. The Government provides annual subvention from the General Revenue to ASTRI. ASTRI's CEO is responsible for overseeing and managing the operation of the R&D centre for ICT.*

Table 2

Funding for R&D centres

R&D centre	Hosting organisation	Operating expenditure (2012-13)		Approved project amount (April 2006 to June 2013) ($ million)
		Amount ($ million)	Source of funding	
NAMI	A local university	38.1	ITF	361.3
APAS (Note 1)	HKPC	15.8	ITF	192.3
HKRITA	A local university	19.1	ITF	277.5
LSCM	Jointly hosted by three local universities	20.9	ITF	309.4
R&D Centre for ICT (Note 2)	ASTRI	130.2	General revenue	2,103.8
	Total	224.1		3,244.3

Source: ITC records

Note 1: APAS was initially set up as an independent legal entity. In November 2012, it merged with and became a division of the HKPC in order to encourage synergy between the HKPC and APAS, rationalise overlaps in functions and achieve higher cost-effectiveness. The centre will be funded by the ITF until March 2017.

Note 2: The role of the R&D Centre for ICT was taken up by ASTRI in April 2006. Since ASTRI was an applied research institute set up as a limited company wholly owned by the Government in 2000, the organisation and management structure was already in place. Unlike the other four R&D centres, which were newly formed as limited companies, the R&D Centre for ICT was subsumed as a unit within ASTRI. In this Audit Report, the R&D Centre for ICT is hereinafter referred to as ASTRI except otherwise stated.

1.14 Table 3 shows a breakdown of the ITF expenditure of $6,551 million incurred from its inception (1999-2000) to the end of 2012-13.

Table 3

Expenditure of ITF
(1999-2000 to 2012-13)

	Amount ($ million)	
ITSP projects (1999-2000 to 2005-06)		1,768
ITSP projects (2006-07 to 2012-13)		
• R&D centre projects	2,294	
• Non-R&D centre projects	1,025	
		3,319
Operating costs of four R&D centres (excluding the R&D Centre for ICT)		484
SERAP		359
GSP		392
UICP		205
Funding support to local laboratories (Note)		24
Total		6,551

Source: ITC records

Note: Since April 2011, the ITF has provided financial assistance to local laboratories for conducting research work under an initiative announced in the 2010 Policy Address. These laboratories are hosted by universities in Hong Kong.

Audit review

1.15 The Audit Commission (Audit) has recently conducted a review of the ITF. The audit findings are contained in two separate Audit Reports:

(a) ITF: Overall management (the subject matter of this Chapter); and

(b) ITF: Management of projects (Chapter 10 of the Director of Audit's Report No. 61).

1.16 As mentioned in paragraph 1.10, the ITSP had accounted for 84% of the approved funds of the ITF, followed by the GSP and the SERAP, each of which has accounted for 6% of the ITF funds. The audits only covered the ITSP and SERAP projects.

1.17 This Chapter focuses on the following areas:

(a) review of ITF and performance monitoring (PART 2);

(b) performance of R&D centres (PART 3);

(c) commercialisation of ITF project results (PART 4); and

(d) way forward (PART 5).

General response from the Administration

1.18 The Commissioner for Innovation and Technology welcomes the audit review of the ITF and agrees with the audit recommendations. She has said that the review can help improve the overall management and operational effectiveness of the ITF.

Acknowledgement

1.19 Audit would like to acknowledge with gratitude the full cooperation of the staff of the ITC and the R&D centres during the course of the audit review.

PART 2: REVIEW OF ITF AND PERFORMANCE MONITORING

2.1 This PART examines the following issues relating to the review of the ITF and performance monitoring:

(a) review of the ITF (paras. 2.2 to 2.10);

(b) post-completion evaluation of ITSP projects (paras. 2.11 to 2.15); and

(c) performance measurement at programme level (paras. 2.16 to 2.19).

Review of ITF

2.2 The ITF's mission is as follows:

> *"As part of the Government's innovation and technology support programme, the ITF seeks to finance projects that contribute to innovation or technology upgrading in industry, as well as those that contribute to the upgrading and development of industry, to be undertaken by government or non-government entities."*

2.3 To supplement the mission, the ITF has adopted a set of broad principles governing its operation. These principles include:

(a) the projects to be supported should be relevant to the needs of the economy;

(b) the ITF should not distinguish between manufacturing and service industries as the line between the two is increasingly difficult to draw in a modern globalised economy;

(c) the projects to be supported should be focused on areas where Hong Kong can do well, so as to optimise the impact of public investments;

(d) the ITF should as far as possible seek to cultivate and foster technological entrepreneurship; and

(e) the administration of the ITF should be publicly accountable, and a credible mechanism for both project assessment and overall evaluation of its effectiveness should be put in place.

2.4 In July 1999, when the Administration sought the FC's approval for the establishment of the ITF, the then Trade and Industry Bureau (now the CEDB — Note 3) pledged that it would review the ITF periodically, say, once every three years with the first review to be conducted three years after sufficient operational experience had been gained. As indicated by the Administration, periodic review of the ITF would help develop a management tool to make the ITF better meet its mission and operate more efficiently. It would enable the ITF to adjust to the changing needs of the community and would also help meet the many external requirements and requests for programme results.

2.5 In July 1999, the Administration also informed the FC that impact studies might be conducted for selected projects to examine the projects' accomplishment in the longer term. In such impact studies, the Administration would look into the following:

(a) the economic benefits generated by the project results (such as the number of jobs created, the amount of investment/turnover generated) as well as indirect and intangible returns (such as the project's contribution to broadening the knowledge base of Hong Kong); and

(b) the measurement of non-financial benefits which was particularly important for midstream research that entailed higher risks. It was considered that even if these projects failed at the commercialisation end, for example, they might still broaden the technological horizon or strengthen the technological capability, thereby contributing to innovation and technology upgrading and leading to spillovers in the long run.

Note 3: *In 2000, the Trade and Industry Bureau was renamed the Commerce and Industry Bureau. In 2002, the Commerce and Industry Bureau merged with the Information Technology and Broadcasting Bureau to form the Commerce, Industry and Technology Bureau. In 2007, the Commerce, Industry and Technology Bureau took up part of the functions of the Economic Development and Labour Bureau and formed the CEDB.*

The Administration further informed the FC that the overall review and impact studies should provide a clearer picture on the usefulness of the ITF as a whole over a longer period of time. Nonetheless, the Administration also indicated that when considering the effectiveness of the ITF, it had to accept the fact that not all projects would be able to accomplish all the goals, namely innovation and technology upgrading, knowledge creation, timely commercialisation of products and services, etc.

2.6 On the basis, among others, of the commitments made by the Administration in paragraphs 2.4 and 2.5, the FC approved the setting up of the ITF, which started operation in November 1999.

2.7 In March 2002, the Government completed a review on the ITF. In February 2003, the Government informed the Legislative Council Panel on Commerce and Industry (LegCo Panel) that ITF projects would be evaluated at project and programme levels and through impact studies. In 2004, the Government reviewed the development of innovation and technology and introduced a new strategic framework (see para. 1.11). By November 2013, the ITF would have operated for 14 years.

2.8 However, Audit noted that since 2004, apart from the conduct of a mid-term review of the five R&D centres in 2009, and a comprehensive review of the five centres' operation and performance in 2011 (discussed in PART 3), the ITC had not conducted an overall comprehensive review of the ITF periodically as the Administration had pledged in 1999 (see para. 2.4). In June 2013, the ITC informed the LegCo Panel that:

(a) up to the end of March 2013, the ITF had already supported over 3,250 projects at a total commitment of about $7.4 billion; and

(b) by 2015-16 when the ITF would be fully committed, the ITF would have been operated for more than one and a half decades. As such, it was considered opportune to conduct a comprehensive review of the ITF and explore areas for improvements. The ITC would take a critical look at the long-term funding arrangements for R&D projects/activities and the R&D centres funded by the ITF. In particular, the ITC would cover the following key areas in the review:

(i) ***Funding scope.*** The ITC had already expanded the funding scope of the ITF, such as to support the production of samples/prototypes and conduct of trials in the public sector. The ITC would need to examine whether it was necessary to further improve/liberalise the funding mechanism of the ITF;

(ii) ***Support for private sector R&D.*** One comment on the present system was that the ITF focused too much on supporting the industry through the designated local research institutes, e.g. universities and R&D centres;

(iii) ***Intellectual properties (IPs) arrangements.*** The ITC would explore if there was scope for further liberalising the arrangements for IPs (including patents, technologies and knowhow, etc.) generated from ITF projects to facilitate transfer to the private sector, as well as stimulate private investment and collaboration between the local universities/R&D centres and their overseas counterparts; and

(iv) ***Evaluation mechanism.*** In order to better assess the effectiveness of the ITF and make improvements as necessary, the ITC would put in place a more robust evaluation and monitoring mechanism.

2.9 The ITC had not conducted an overall comprehensive review of the ITF. Moreover, the ITC had not regularly conduced impact studies of selected projects except for engaging a consultant to conduct an impact study of the ITF in 2004. During the study, the consultant collected feedback from stakeholders (including successful project applicants, project sponsors, users and potential users of project results) on matters such as whether the ITF programmes were beneficial to Hong Kong, to industries and to universities/research institutes. The survey results provided an indication of the impact and usefulness of the ITF projects. Since then, the ITC has not conducted any impact studies.

2.10 Audit considers that the ITC needs to conduct an overall comprehensive review of the ITF without delay. In particular, it should work out a timetable with a target completion date for the review, so that the ITF can be timely fine-tuned to meet the changing needs of the community and meet the many external requirements and requests for programme results.

Post-completion evaluation of ITSP projects

2.11 Over 80% of the funds under the ITF were spent on ITSP projects. The ITC conducts post-completion evaluation for each project six months after project completion (both for R&D centre projects and non-R&D centre projects) on the following aspects of the projects:

(a) technology breakthrough;

(b) successful commercialisation;

(c) adoption of technology/infrastructure by industry;

(d) whether the project is rated as "successful"; and

(e) whether reassessment is required in the future.

2.12 Audit selected 25 ITSP projects (five from each R&D centre) completed in the period from May 2008 to December 2012 (with project cost ranging from $1 million to $19 million and on average $6.4 million) for examination of their performance at project level. Audit found that the ITC had concluded in its records that the 25 projects had been satisfactorily completed because the Final Reports and audited accounts for the projects had been received and all project milestones had been achieved. However, Audit noted the following:

(a) up to 30 June 2013, 13 of the 25 projects had not been evaluated after project completion in accordance with the aspects laid down in paragraph 2.11. Of these 13 projects, 11 were overdue for evaluation for three months or more (with the longest overdue by 33 months);

(b) for all the remaining 12 projects with post-completion evaluations conducted, the evaluation results indicated that there were no "technology breakthrough" or "successful commercialisation", and the majority of the projects were not adopted by industry (see Table 4);

Table 4

Results of post-completion evaluations of 12 ITSP R&D centre projects

Project	R&D centre	Project cost ($ million)	Technology breakthrough	Successful commercialisation	Adoption by industry	Rated as "successful"	Reassessment in the future
1	LSCM	1.6	×	×	✓	✓	×
2	LSCM	3.1	×	×	×	✓	×
3	LSCM	10.9	×	×	×	✓	×
4	LSCM	11.0	×	×	×	✓	×
5	NAMI	1.2	×	×	×	×	×
6	NAMI	1.6	×	×	×	×	×
7	NAMI	2.1	×	×	×	×	×
8	NAMI	4.0	×	×	×	×	×
9	ASTRI	18.7	×	×	×	✓	×
10	HKRITA	2.6	×	×	✓	✓	×
11	HKRITA	4.8	×	×	×	✓	×
12	HKRITA	4.9	×	×	×	✓	×

Legend: ✓ denotes Yes or achieved.
× denotes No or not achieved.

Source: Audit analysis of ITF records

(c) although Projects 1 and 10 were rated as having been adopted by industry, it was noted that:

(i) the ITC did not have records showing the details of how Project 1 had been adopted by the industry; and

(ii) the company concerned only used the Project 10 results on a trial basis. It subsequently informed the R&D centre that it would not adopt the project results;

(d) the ITC had not communicated/followed up with the centres on the results of its post-completion evaluation;

(e) none of the 12 projects had achieved technology breakthrough or successful commericalisation and only the results of two projects had been adopted by industry. However, eight were still rated as "successful" by the ITC because they had met the project milestones; and

(f) given that the results of R&D projects may take some time to flourish, six months was far too short to determine the success of a project. The ITC therefore should not have concluded that these R&D projects required no reassessment in the future.

2.13 Audit considers that conducting post-completion evaluation after a period of six months may be too soon for completing an effective post-completion evaluation. The ITC needs to review the appropriateness of the timeframe and consider setting a longer timeframe or conducting, in worthwhile cases, a follow-up evaluation. The ITC should also critically review its methodology adopted for post-completion evaluation of ITSP projects and improve it, including the following:

(a) performing more comprehensive post-completion evaluation, including impact studies, for selected projects, e.g. projects involving large sums of money (say, with project cost over $5 million) and projects which are expected to bring forth significant impact on the industries;

(b) exploring how the different aspects of the projects (e.g. technology breakthrough, successful commercialisation, adoption by industry) can be more objectively evaluated, with technical input sought, where necessary;

(c) setting clear criteria on how a project can be regarded as "successful";

(d) co-developing with the R&D centres the benchmark for measuring project results; and

(e) laying down circumstances under which follow-up evaluations should be conducted.

2.14 In April 2013, the ITC devised a new evaluation form whereby ITF grantees are required to:

(a) evaluate by themselves the performance of the projects, including their own assessment of various project aspects, e.g. "impact on the community" and "opportunities for training or jobs created in relation to commercialisation of project results", "technology breakthrough", "successful commercialisation" and "industry adoption"; and

(b) report the progress of technology transfer and commercialisation activities two years and five years after project completion.

As at September 2013, the evaluation form was in use on a trial basis.

2.15 Audit welcomes the ITC's recent adoption of the new evaluation form, but considers that it still needs to provide clear guidelines to assist the grantees to evaluate projects more effectively. As the Administration had pointed out as early as in July 1999 when seeking funds for establishing the ITF:

(a) to facilitate project assessment, ITF grantees would be asked to set out, where possible, quantifiable objectives that the proposed project was expected to achieve; and

(b) these objectives would also form the basis for the evaluation of the results of the projects.

Only projects which meet the needs of the economy and can bring forth innovation and technology upgrading, knowledge creation or timely commercialisation (see para. 2.5) should be funded by the ITF. Therefore, notwithstanding the adoption of the new evaluation form, there is a need for the ITC to establish a more structured and coordinated approach in assessing the effectiveness of the projects in achieving their R&D objectives.

Performance measurement at programme level

Existing performance information

2.16 At programme level, to measure the performance of the four programmes of the ITF (namely the ITSP, the SERAP, the UICP and the GSP), the ITC has reported:

(a) in the Government's annual Estimates performance indicators for each programme. Such indicators comprise the number of applications received and processed, the number of projects funded and being monitored, and the number of new projects; and

(b) in the annual progress report submitted to the LegCo Panel performance indicators comprising, for each of the five R&D centres, the number of new projects, the amount of project costs for newly approved projects, the operating expenditure, the percentage of industry contribution to projects and the amount of industry income (i.e. licence fee and royalty income and sponsorship) received.

Need for more performance indicators

2.17 Audit has performed a research of the performance indicators used by overseas R&D institutes. Audit found that the ITC's performance indicators could be enhanced to provide more comprehensive information on the performance of the ITF at programme level. Examples of performance indicators used by overseas R&D institutes are shown in Table 5.

Table 5

Examples of performance indicators used by overseas R&D institutes

	Performance indicator

Australia	• Number of commercialisation outputs:
	  ■ Invention disclosures
	  ■ Licences executed
	  ■ Patents filed
	  ■ Start-up companies formed
	• Number of PhD students receiving stipends and research support
	• Number of Masters students receiving stipends and research support
	• Number of overseas PhD students involved in the project
	• Number of research associates/assistants funded

Singapore	• Number of PhD students trained and graduated • Number of research institute staff spun out to locally-based industry as research scientists and engineers • Number of patents filed • Number of research papers published • Number of industry projects • Industry funding • National gross expenditure on R&D • Business expenditure on R&D • Number of licences or spin-offs arising from commercialisation of technology • Number of PhD post-graduates who work in Singapore upon graduation
An international institute based in France	• Gross domestic expenditure on R&D • R&D expenditure as a percentage of gross domestic product • Number of patents in the ICT sector • Number of researchers per thousand labour force • Number of R&D staff per thousand labour force • Business enterprise expenditure on R&D • Number of government R&D personnel

Source: Audit research

2.18 Apart from making reference to the performance indicators used by overseas R&D institutes, in Audit's view, the ITC could also consider co-developing with R&D centres and adopting performance indicators such as:

(a) number and extent of technology breakthrough;

(b) number and extent of technologies/products adopted by industries;

(c) number of visitors to the ITC's website showing information on completed projects;

(d) number of industry enquiries to completed projects of R&D centres;

(e) number of exhibitions organised and number of participants in the exhibitions;

(f) percentage of projects that achieved commercialisation within a stated timeframe;

(g) number of contract researches generated;

(h) number of partnerships/alliances formed among private sector firms/universities/research institutes; and

(i) other qualitative measures.

2.19 Audit considers that the ITC needs to review and improve its performance measurement of the ITF, so as to enable it to regularly monitor how the ITF has contributed to innovation and technology upgrading in industry.

PART 3: PERFORMANCE OF R&D CENTRES

3.1 This PART examines the issues relating to the performance of the R&D centres.

Background

3.2 In June 2005, the CEDB sought the FC's approval for adopting a new funding approach for innovation and technology development through the establishment of R&D centres under the ITF and funding R&D projects under specific focus themes which could upgrade and enhance the competitiveness of the industries.

3.3 In April 2006, five R&D centres were set up to drive and coordinate applied R&D in the selected technology focus areas and to promote commercialisation of R&D results and technology transfer (see para. 1.12).

Performance of R&D centres

3.4 In June 2005, when seeking approval for the allocation of $273.9 million (excluding the allocation to the R&D Centre for ICT which was separately subvented) from the ITF for setting up the five R&D centres, the then Commerce, Industry and Technology Bureau informed the FC that:

(a) each R&D centre would have an initial term of operation of five years. The ITF would provide funding for setting up and maintaining the operation of the centres for the initial five years, subject to the arrangement to be made for providing recurrent subvention to ASTRI to support the extra operating expenses for its R&D centre in the order of $60 million per annum over the five-year period. Since the main objective of a centre was to conduct industry-oriented R&D, each centre was required to entice industry participation and contributions to the R&D projects undertaken by it;

(b) each R&D centre was required to evaluate its performance regularly according to a set of performance indicators, including:

(i) industry participation as measured by the number of companies involved in R&D projects and the level of contribution made by them;

(ii) project performance as measured by whether the pre-set milestones were met in a timely manner and cost-effectively;

(iii) quality of R&D programme as measured by the number of patents granted, other IPs generated, etc.;

(iv) utilisation of research output as measured by the adoption of research output by the industry and the number of licensing agreements signed and consulting services offered, etc.;

(v) amount of revenue generated from R&D projects;

(vi) number of researchers trained and participated in R&D projects; and

(vii) overall contribution to the economy of Hong Kong;

(c) the projected operating cost for each R&D centre would represent on average 16% of the total R&D expenditure for R&D projects undertaken by it;

(d) based on initial business plans of the R&D centres submitted, many of them were expected to be able to have up to 40% contributions from the industry as they ramped up to the fifth year of operation;

(e) if an R&D centre was to continue operation beyond the five-year period, it was expected to do so on a self-financing basis, counting on its ability to obtain adequate industry contributions and generate income to meet its operating cost; and

(f) the Administration would undertake a study to analyse the economic and social benefits generated from the R&D centres with a view to assessing the overall impacts of these initiatives on the development of Hong Kong's industries.

3.5 In 2008, the ITC conducted a mid-term review on the operation of the R&D centres and reported in April 2009, among others, the following major findings to the LegCo Panel:

(a) by the end of 2008, the R&D centres had undertaken 316 projects with an estimated cost of $1,344.6 million. The centres' project expenditures had lagged behind their original estimate drawn up in 2005; and

(b) the centres had secured a total contribution of $140.9 million from the industry in support of 208 platform projects and collaborative projects (Note 4) funded under the ITF, representing about 11% of the total project cost estimate.

3.6 In June 2009, the CEDB sought the FC's approval for a further allocation of $369 million from the ITF to support the continued operation of the five R&D centres up to 2013-14. The CEDB informed the FC that given the then prevailing financial climate, it was considered that the centres would have genuine difficulty in increasing the proportion of industry contribution substantially in the near future and, having regard to the feedback from the centres and the industry, the Government decided to adjust the centres' target of soliciting industry contributions from 40% to 15% pending future review.

3.7 In December 2011, the ITC reported to the LegCo Panel the result of its comprehensive review of R&D centres after their first five years of operation from 2006-07 to 2010-11. In May 2012, the CEDB sought the FC's approval for another allocation of $275.3 million from the ITF to support the continued operation of the R&D centres. In brief, it was approved that:

(a) for APAS and NAMI, which had achieved more than 15% industry contribution in their first five-year period, the target was set at 20% for their second five-year period; and

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Note 4: *Platform projects require industry sponsorship from at least two private sector companies covering at least 10% of the project cost. Collaborative projects require industry contribution of at least 30% of the project cost.*

(b) for HKRITA and LSCM, which had not achieved the industry contribution of 15%, they were required to achieve an industry contribution target of 18% in the two-year period ending 31 March 2013.

The ITC undertook to closely monitor and review the centres' performance and continue to report progress to the LegCo Panel every year. As regards the R&D Centre for ICT, because its operating cost was funded separately by the Government through recurrent subvention to ASTRI, there was no reporting of the centre's performance to the FC.

Audit findings

3.8 R&D centres are platforms for coordinating applied R&D in designated technology areas and facilitating technology transfer to the industry. Therefore, the level of industry contribution is an important indicator to show the degree of interest of the industry in their work. Up to March 2013, the operating costs of the R&D centres, not counting the cost of the R&D Centre for ICT, amounted to $484 million (see para. 1.14) and the costs of R&D projects they managed amounted to $3.2 billion (see para. 1.13). In 2012-13, the operating cost of the R&D Centre for ICT amounted to $130.2 million (see para. 1.13). In view of the significant amount involved, Audit examined the performance of the R&D centres, including their level of industry contribution achieved. Audit noted that the cost-effectiveness of the R&D centres was a major concern of the LegCo Panel.

Performance of APAS

3.9 APAS started operation in April 2006. According to the FC paper of June 2005, the following targets were set and estimates were made for APAS:

(a) APAS should be able to solicit up to 40% contributions from the industry by the fifth year of operation (target industry contribution was adjusted from 40% to 15% in June 2009 — Note 5);

Note 5: *The level of industry contribution was calculated as follows:*

$$\frac{\textit{Industry contribution pledged}}{\textit{Approved project expenditure}} \times 100\%$$

(b) APAS should be able to continue operation on a self-financing basis after the five-year period;

(c) an amount of $100 million was approved for the establishment and the operation in the first five years;

(d) APAS was expected to conduct about 110 projects of different nature with corresponding R&D expenditure of about $441 million in the five-year period;

(e) APAS would comprise five key staff and eight supporting staff; and

(f) projected operating costs of the centre were expected to be, on average, 16% of its total R&D expenditure for R&D projects in the first five-year period of operation (Note 6).

3.10 By March 2013, APAS had operated for seven years. In November 2012, APAS was merged with the HKPC and became the APAS Division of the HKPC. Based on information submitted to LegCo and APAS's records, APAS's performance over the seven years from 2006-07 to 2012-13 are summarised as follows:

(a) the operating expenditure and industry income were as follows:

Note 6: *Such operating costs included staffing, accommodation, equipment, commercialisation/technology transfer expenditure and other administrative/miscellaneous expenses. The ratio was calculated as follows:*

$$\frac{\textit{Actual operating costs of an R\&D centre}}{\textit{Actual total R\&D expenditure for R\&D projects of the centre}} \times 100\%$$

APAS
Operating expenditure
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	($ million)							
Staffing	1.9	7.4	7.0	7.4	6.8	13.0	9.9	53.4
Accommodation	1.5	1.5	1.5	1.6	1.5	1.5	1.5	10.6
Equipment	0.3	4.8	1.2	6.4	5.9	2.5	0.3	21.4
Others	5.9	2.4	3.0	1.5	0.9	2.4	4.1	20.2
Total	9.6	16.1	12.7	16.9	15.1	19.4	15.8	105.6

Source: LegCo and APAS records

APAS
Industry income received
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	($ million)							
Industry sponsorship for projects	0	4.10	3.90	4.14	4.62	3.24	1.42	21.42
Licence fee and royalty income	0	0	0	0	0	0.05	0.01	0.06
Contract services	0	0	0.07	0	0	0	0.03	0.10
Others	0	0.03	0.15	0.21	0.34	0.15	0.15	1.03
Total	0	4.13	4.12	4.35	4.96	3.44	1.61	22.61

Source: LegCo and APAS records

It can be seen that APAS's operating expenditure ($105.6 million) was far higher than the industry income ($22.61 million) it received in the seven years. The chance of achieving the self-financing target in the near future is remote;

(b) against the original target of 40%, revised to 15% in 2009 and to 20% for the second five-year period, APAS achieved the following levels of industry contribution in the period from 2006-07 to 2012-13:

APAS
Level of industry contribution
(2006-07 to 2012-13)

	2006-07	**2007-08**	**2008-09**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
Target	40% (revised to 15% in 2009)					20% for 2nd five-year period (i.e. 2011-12 to 2015-16)	
Actual	0	19.6%	11.0%	11.7%	28.1%	13.9%	30.5%

Source: LegCo and APAS records

The level of industry contributions showed significant improvement in 2012-13. As the ITC reported to the LegCo Panel in June 2013, with the successful merger of APAS with HKPC in November 2012, APAS would be able to better drive applied R&D by leveraging on the HKPC's wide industry network and resources and would be in a better position to develop its businesses;

(c) although APAS was expected to conduct about 110 projects of different nature with the corresponding R&D expenditure of about $441 million over the first five-year period (see para. 3.9), it transpired that:

(i) APAS had conducted only 59 projects in the seven-year period from 2006-07 to 2012-13; and

APAS
Number of projects conducted
(2006-07 to 2012-13)

Planned	From 2006-07 to 2010-11 (five years)	2011-12	2012-13	Total
110	47	6	6	59

Source: LegCo Panel papers

(ii) total project costs in the seven years from 2006-07 to 2012-13 amounted to $123.9 million, i.e. $2.1 million per project;

APAS
R&D project costs
(2006-07 to 2012-13)

Planned	From 2006-07 to 2010-11 (five years)	2011-12	2012-13	Total
($ million)				
441	89.9	17.7	16.3	123.9

Source: LegCo Panel papers

(d) according to the paper submitted by the Administration in June 2005 to the FC, the number of staff for APAS would be minimised at a level of 11 and expanded to 13 later. However, Audit noted that despite the fact that both the number of projects undertaken and project costs were much lower than planned, the actual staff strength for APAS had increased from 9 in 2006-07 to 29 in 2011-12, and then decreased to 24 in 2012-13. The ITC needs to look into the reasons behind the staff increase with a view to improving the cost-effectiveness of APAS; and

APAS
Staff strength
(2006-07 to 2012-13)

Planned	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
13	9	14	18	21	25	29	24

Source: LegCo and APAS records

(e) although APAS was expected to achieve a ratio of 16% for "centre operating cost to R&D expenditure" (see para. 3.9), it transpired that the ratio for the seven years from 2006-07 to 2012-13 was persistently much higher than the planned level of 16% in all seven years (as shown below). This indicates that the cost-effectiveness of APAS's operation calls for improvement.

APAS
Ratio of operating expenditure to R&D project costs
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
	($ million)						
Operating expenditure	9.6	16.1	12.7	16.9	15.1	19.4	15.8
R&D project costs	0	6.4	16.5	37.0	30.0	17.7	16.3
Ratio (estimate was 16%)	—	251%	77%	46%	50%	110%	97%

Source: LegCo and APAS records

Performance of HKRITA

3.11 HKRITA started operation in April 2006. According to the FC paper of June 2005, the following targets were set and estimates were made for HKRITA:

(a) HKRITA should be able to solicit up to 40% contributions from the industry by the fifth year of operation (adjusted in June 2009 from 40% to 15%);

(b) HKRITA should be able to continue operation on a self-financing basis after the five-year period;

(c) an amount of $60.3 million was approved for the establishment and the first five-year operation of the centre;

(d) HKRITA was expected to carry out 105 projects in five years;

(e) HKRITA would comprise four key staff and six supporting staff in the first year rising to 16 in the fifth year; and

(f) projected operating costs of HKRITA were expected to be, on average, 16% of the total R&D expenditure for R&D projects in the first five-year period of operation.

3.12 By March 2013, HKRITA had operated for seven years. Based on the information submitted to LegCo and HKRITA's records, HKRITA's performance over the seven years from 2006-07 to 2012-13 are summarised as follows:

(a) the operating expenditure and industry income were as follows:

HKRITA
Operating expenditure
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	($ million)							
Staffing	4.5	6.1	7.5	8.5	9.7	11.8	12.9	61.0
Accommodation	0.1	0.4	0.3	0.5	0.5	1.3	1.9	5.0
Equipment	0.7	1.5	0.2	0	0.1	0	1.2	3.7
Others	0.4	1.4	1.4	1.2	2.0	2.9	3.1	12.4
Total	5.7	9.4	9.4	10.2	12.3	16.0	19.1	82.1

Source: LegCo and HKRITA records

HKRITA
Industry income
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	($ million)							
Industry sponsorship for projects	0	5.02	3.28	8.85	12.59	3.67	7.52	40.93
Licence fee and royalty income	0	0	0	0.07	5.19	0.57	1.02	6.85
Total	0	5.02	3.28	8.92	17.78	4.24	8.54	47.78

Source: LegCo and HKRITA records

It can be seen that HKRITA's operating expenditure ($82.1 million) was much higher than the industry income ($47.78 million) in the seven years from 2006-07 to 2012-13. The chance of achieving the self-financing target in the near future is remote;

(b) while the original target was 40%, revised to 15% in June 2009 and to 18% for the two-year period ending 31 March 2013, HKRITA achieved the following levels of industry contribution in the seven years from 2006-07 to 2012-13:

HKRITA
Level of industry contribution
(2006-07 to 2012-13)

	2006-07	**2007-08**	**2008-09**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
Target	40% (revised to 15% in 2009)					18% (Note)	
Actual	0	11.6%	14.9%	11.6%	12.3%	23.0%	26.8%

Source: LegCo and HKRITA records

Note: The industry contribution target for HKRITA for the period from 2011-12 to 2012-13 was 18% and for the period from 2011-12 to 2015-16 was 20%.

Audit noted that HKRITA had improved its level of industry contribution substantially in 2011-12 and 2012-13;

(c) HKRITA was expected to conduct 105 projects in five years from 2006-07 to 2010-11 (see para. 3.11). It had conducted only 84 projects in the seven-year period from 2006-07 to 2012-13;

HKRITA
Number of projects conducted
(2006-07 to 2012-13)

Planned	From 2006-07 to 2010-11 (five years)	2011-12	2012-13	Total
105	51	14	19	84

Source: LegCo Panel papers

(d) according to the paper submitted by the Administration to the FC in June 2005, the number of staff for HKRITA would be 10 for the first year rising to 20 for the fifth year. However, despite the fact that the number of projects undertaken by HKRITA was lower than planned, the centre's staff strength increased from 11 in 2006-07 to 19 in 2010-11 and further to 25 in 2012-13. The ITC needs to look into the reasons behind the staff increase with a view to improving the cost-effectiveness of HKRITA; and

HKRITA
Staff strength
(2006-07 to 2012-13)

Planned	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
10 in the 1st year 20 in the 5th year	11	14	17	17	19	22	25

Source: LegCo and HKRITA records

(e) although HKRITA was expected to achieve on average a ratio of 16% for "centre operating cost to R&D expenditure" (see para. 3.11), it transpired that the ratio for the seven years from 2006-07 to 2012-13 was persistently much higher than the planned level of 16% (as shown below). This indicates that the cost-effectiveness of HKRITA's operation calls for improvement.

HKRITA
Ratio of operating expenditure to R&D project costs
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
	($ million)						
Operating expenditure	5.7	9.4	9.4	10.2	12.3	16.0	19.1
R&D project costs	0	11.1	35.8	31.8	19.3	37.5	28.0
Ratio (estimate was 16%)	—	85%	26%	32%	64%	43%	68%

Source: LegCo and HKRITA records

Performance of ASTRI

3.13 The R&D Centre for ICT under ASTRI started operation in April 2006. According to the FC paper of June 2005, the following targets were set and estimates were made for the centre:

(a) the centre should be able to solicit up to 40% contributions from the industry by the fifth year of operation (adjusted in June 2009 from 40% to 15%);

(b) the centre planned to conduct about 100 R&D projects covering four technology areas (namely, communications technologies, consumer electronics, IC design and opto-electronics);

(c) the centre should be able to continue operation on a self-financing basis after the five-year period; and

(d) the centre required extra operating expenses in the order of $60 million per annum over the five-year period.

3.14 By March 2013, the centre had operated for seven years. Based on the ITC's and the centre's records, ASTRI's performance over the seven years are summarised as follows:

(a) the operating expenditure and industry income were as follows:

ASTRI
Operating expenditure
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	($ million)							
Staffing	69.1	65.5	50.2	62.0	64.0	69.8	76.7	457.3
Accommodation	12.0	12.9	13.5	15.6	20.0	22.1	23.6	119.7
Equipment	5.5	1.7	5.8	11.9	2.2	6.2	2.9	36.2
Others	19.0	19.7	21.7	26.8	27.2	24.6	27.0	166.0
Total	105.6	99.8	91.2	116.3	113.4	122.7	130.2	779.2

Source: LegCo and ASTRI records

ASTRI
Industry income
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	($ million)							
Industry sponsorship for projects	5.20	13.8	36.0	38.60	44.10	43.50	46.07	227.27
Licence fee and royalty income	0.60	0	0.1	4.50	10.70	10.15	9.12	35.17
Contract services	0.10	0	3.3	2.90	5.50	6.84	12.22	30.86
Others	0	0	0	1.20	0.70	0.38	0.62	2.90
Total	5.90	13.80	39.40	47.20	61.00	60.87	68.03	296.20

Source: LegCo and ASTRI records

It can be seen that the centre's operating expenditure in the seven years from 2006-07 to 2012-13 ($779.20 million) were well above its industry income ($296.20 million), indicating that the self-finance target cannot be achieved in the near future;

(b) while the original target was 40%, revised to 15% in June 2009, the centre achieved the following levels of industry contribution in the seven years, exceeding the target for five years:

ASTRI
Level of industry contribution
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Target	40% (revised to 15% in 2009)					20% for 2nd five-year period (i.e. 2011-12 to 2015-16)	
Actual	4.0%	7.8%	16.1%	16.9%	20.3%	20.2%	25.3%

Source: LegCo and ASTRI records

(c) the centre was expected to conduct about 100 R&D projects covering its four technology areas (see para. 3.13). Based on LegCo Panel papers, it had conducted 261 projects in the seven-year period from 2006-07 to 2012-13. The number of projects conducted by the centre had far exceeded the planned number; and

ASTRI
Number of projects conducted
(2006-07 to 2012-13)

Planned	From 2006-07 to 2010-11 (five years)	2011-12	2012-13	Total
100	196	27	38	261

Source: LegCo Panel papers

(d) while the average target ratio was 16% for "centre operating cost to R&D expenditure", the centre's ratios for the seven years from 2006-07 to 2012-13 ranged from 38.2% to 74.6% (around 40% in more recent years), indicating that the cost-effectiveness of the centre's operation calls for improvement.

ASTRI
Ratio of operating expenditure to R&D project costs
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
	($ million)						
Operating expenditure	105.6	99.8	91.2	116.3	113.4	122.7	130.2
R&D project costs	141.5	168.2	238.6	272.8	292.9	295.6	267.4
Ratio (estimate was 16%)	74.6%	59.3%	38.2%	42.6%	38.7%	41.5%	48.7%

Source: LegCo and ASTRI records

Performance of NAMI

3.15 NAMI started operation in April 2006. According to the FC paper of June 2005, the following targets were set and estimates were made for NAMI:

(a) NAMI should be able to solicit up to 40% contributions from the industry by the fifth year of operation (adjusted in June 2009 from 40% to 15%);

(b) NAMI should be able to continue operation on a self-financing basis after the five-year period;

(c) an amount of $61.4 million was approved for the establishment and the first five-year operation of the centre;

(d) NAMI planned to conduct 75 projects in five years;

(e) NAMI would comprise six key staff; and

(f) projected total operating costs of the centre were expected to be, on average, 16% of the total R&D expenditure for R&D projects in the first five-year period of operation.

3.16 By March 2013, NAMI had operated for seven years. Based on information submitted by the ITC to LegCo and NAMI's records, NAMI's performance over the seven years are summarised as follows:

(a) the operating expenditure and industry income were as follows:

NAMI
Operating expenditure
(2006-07 to 2012-13)

	2006-07	**2007-08**	**2008-09**	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**Total**
	($ million)							
Staffing	6.9	7.3	8.0	14.5	18.8	26.0	26.8	108.3
Accommodation	0.8	0.8	0.8	1.6	4.1	2.4	3.7	14.2
Equipment	0.3	0.1	0.3	8.7	0.4	0.5	2.9	13.2
Others	2.4	2.5	1.8	2.0	2.4	6.4	4.7	22.2
Total	10.4	10.7	10.9	26.8	25.7	35.3	38.1	157.9

Source: LegCo and NAMI records

NAMI
Industry income
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	($ million)							
Industry sponsorship for projects	0	1.60	4.60	10.13	33.52	7.57	21.30	78.72
Licence fee and royalty income	0	0	0	0.06	0.04	0	0.35	0.45
Contract services	0.40	1.40	0.80	0.03	0	0.11	1.43	4.17
Total	0.40	3.00	5.40	10.22	33.56	7.68	23.08	83.34

Source: LegCo and NAMI records

It can be seen that NAMI's operating expenditure ($157.9 million) was much higher than the industry income ($83.34 million) in the seven years. The chance of achieving the self-financing target in the near future is remote;

(b) while the original target was 40%, revised to 15% in June 2009 and 20% for the second five-year period, NAMI achieved the following levels of industry contribution in the seven years from 2006-07 to 2012-13:

NAMI
Level of industry contribution
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Target	40% (revised to 15% in 2009)					20% for 2nd five-year period (i.e. 2011-12 to 2015-16)	
Actual	0	33.3%	11.8%	29.7%	41.1%	35.9%	39.0%

Source: LegCo and NAMI records

NAMI had shown the best performance among all centres with its level of industry contribution at a level exceeding or close to the target level;

(c) NAMI was expected to conduct 75 projects in the five-year period 2006-07 to 2010-11 (see para. 3.15). Based on LegCo Panel papers, it had conducted only 45 projects in five-year period from 2006-07 to 2010-11;

NAMI
Number of projects conducted
(2006-07 to 2012-13)

Planned	From 2006-07 to 2010-11 (five years)	2011-12	2012-13	Total
75	45	15	22	82

Source: LegCo Panel papers

(d) according to the paper submitted by the Administration to the FC in June 2005, the number of staff in the first year would be about 17. However, despite the fact that the number of projects conducted was lower than that planned, the staff strength for NAMI had increased from the original estimate of 17 staff in 2005 to 53 in 2012-13. The ITC needs to look into the reasons behind the staff increase with a view to improving the cost-effectiveness of NAMI; and

NAMI
Staff strength
(2006-07 to 2012-13)

Planned	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
17 in the 1st year	14	15	21	39	45	47	53

Source: LegCo and NAMI records

(e) although the R&D centres were expected to maintain a ratio of 16% for "centre operating cost to R&D expenditure" (see para. 3.15), it transpired that the ratios of NAMI for the seven years were persistently much higher than the planned level of 16% in all seven years (as shown below), indicating that the cost-effectiveness of the centre's operation calls for improvement.

NAMI
Ratio of operating expenditure to R&D project costs
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
	($ million)						
Operating expenditure	10.4	10.7	10.9	26.8	25.7	35.3	38.1
R&D project costs	0	1.7	11.4	31.0	45.4	50.1	47.8
Ratio (estimate was 16%)	—	629%	96%	86%	57%	70%	80%

Source: LegCo and NAMI records

Performance of LSCM

3.17 LSCM started operation in April 2006. According to the FC paper of June 2005, the following targets were set for the centre:

(a) the centre should be able to solicit up to 40% contributions from the industry by the fifth year of operation (adjusted in June 2009 from 40% to 15%);

(b) the centre should be able to continue operation on a self-financing basis after the five-year period;

(c) an amount of $52.2 million was approved for the establishment and the first five-year operation of the centre;

(d) the centre planned to conduct 80 projects in five years;

(e) the centre would comprise six key staff. The total headcount would rise to 14 in the fourth year; and

(f) projected total operating costs of the R&D centres were expected to be, on average, 16% of their total R&D expenditure for R&D projects in the first five-year period of operation.

3.18 By March 2013, LSCM had operated for seven years. Based on information submitted by the ITC to LegCo and the LSCM's records, LSCM's performance over the seven years from 2006-07 to 2012-13 are summarised as follows:

(a) the operating expenditure and industry income were as follows:

LSCM
Operating expenditure
(2006-07 to 2012-13)

	2006-07	**2007-08**	**2008-09**	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**Total**
	($ million)							
Staffing	5.1	9.6	7.9	8.5	10.3	11.4	11.6	64.4
Accommodation	0.2	0.3	1.8	2.8	3.6	3.8	3.7	16.2
Equipment	0.9	0.2	0.6	1.5	0.5	0.3	0.7	4.7
Others	1.9	2.3	2.0	1.2	3.1	3.6	4.9	19.0
Total	8.1	12.4	12.3	14.0	17.5	19.1	20.9	104.3

Source: LegCo and LSCM records

LSCM
Industry income
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
	($ million)							
Industry sponsorship for projects	0	2.42	5.92	5.65	7.96	3.78	7.97	33.70
Licence fee and royalty income	0	0	0	0	0	0.07	0.16	0.23
Contract services	0.03	0.04	0	0.01	0	0	0.15	0.23
Others	0	0	0	17.63	0.13	0	0	17.76
Total	0.03	2.46	5.92	23.29	8.09	3.85	8.28	51.92

Source: LegCo and LSCM records

It can be seen that the LSCM's operating expenditure ($104.3 million) was much higher than the industry income ($51.92 million) in the seven years. The centre would unlikely achieve the self-financing target in the short term;

(b) against the original target of 40%, revised to 15% in 2009-10, and further revised to 18% for 2011-12 to 2012-13, LSCM achieved the following levels of industry contribution in the seven years from 2006-07 to 2012-13:

LSCM
Level of industry contribution
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Target	40% (revised to 15% in 2009)					18% (Note)	
Actual	0	11.7%	11.8%	13.4%	12.1%	15.4%	18.7%

Source: LegCo and LSCM records

Note: The industry contribution target for LSCM for the period from 2011-12 to 2012-13 was 18% and for the period from 2011-12 to 2015-16 was 20%.

(c) LSCM was expected to conduct 80 projects in the five-year period 2006-07 to 2010-11 (see para. 3.17). Based on LegCo Panel papers, it had conducted only 47 projects in the period from 2006-07 to 2012-13;

LSCM
Number of projects conducted
(2006-07 to 2012-13)

Planned	From 2006-07 to 2010-11 (five years)	2011-12	2012-13	Total
80	29	5	13	47

Source: LegCo Panel papers

(d) according to the paper submitted by the Administration to the FC in June 2005, the number of staff would be 6 initially and increased to 14 in the fourth year. However, despite the fact that the number of projects undertaken was much lower than that planned, the staff strength for the R&D centre increased from 13 in 2006-07 to 53 in 2012-13. The ITC needs to look into the reasons behind the staff increase with a view to improving the cost-effectiveness of LSCM; and

LSCM
Staff strength
(2006-07 to 2012-13)

Planned	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
6 in the 1st year and 14 in the 4th year	13	21	31	40	37	44	53

Source: LegCo and LSCM records

(e) the ratio for the centre's operating expenditure versus its R&D project costs (as shown below) was persistently higher than the 16% which the R&D centres were expected to achieve (see para. 3.4(c)), indicating that the cost-effectiveness of the centre's operation calls for improvement.

LSCM
Ratio of operating expenditure to R&D project costs
(2006-07 to 2012-13)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
	($ million)						
Operating expenditure	8.1	12.4	12.3	14.0	17.5	19.1	20.9
R&D project costs	0	8.5	40.5	49.0	41.4	48.0	35.4
Ratio (estimate was 16%)	—	145.9%	30.4%	28.6%	42.3%	39.8%	59.0%

Source: LegCo and LSCM records

Audit comments

3.19 Audit conducted an assessment of the performance of individual R&D centres (see paras. 3.9 to 3.18). Audit has noted that:

(a) the cost-effectiveness of the centres' operations calls for improvement. The centres had operated for more than seven years and the performance results have deviated significantly from the estimated position as set out in 2005 when the approval for the setting up of the centres was sought from the FC;

(b) in particular, the level of industry contribution for the centres should be subject to review. The level was initially set at 40% for the 5th year of operation. However, it was drastically adjusted downwards to 15% in June 2009, having regard to the then financial climate and feedback from the centres and the industry (see para. 3.6). It is opportune to review the level in the forthcoming comprehensive review of the ITF, taking into account the experience gained in the past seven years; and

(c) the chance of achieving the self-financing target in the near future is remote. The ITC needs to critically review the operations of the centres, and set more realistic performance targets for their operations.

PART 4: COMMERCIALISATION OF ITF PROJECT RESULTS

4.1 This PART examines the issues relating to the commercialisation of ITF projects results. It covers:

(a) commercialisation of ITSP project results (paras. 4.4 to 4.18); and

(b) commercialisation of SERAP project results (paras. 4.19 to 4.30).

Background

4.2 Commercialisation refers to the R&D results (such as an R&D product) launched or sold commercially. It is an important aspect of the management of the ITF because it is an indicator of the extent that the Government's investment offers value for money. However, not all R&D projects can be commercialised and this should be taken into consideration in evaluating the effectiveness of the ITF.

4.3 According to the ITC, while monetary return is not the primary consideration for its support to ITF projects, commercialisation is a useful performance indicator as it demonstrates whether the R&D results are relevant to the industry. Furthermore, commercialisation is important for SERAP projects as the aim of SERAP is to provide pre-venture and venture capital funding to small technology-based and entrepreneur-driven companies and the Government expects to recoup the funding gradually if the project is commercially successful.

Commercialisation of ITSP project results

Licence fee income of R&D centres

4.4 For the period from April 2006 (establishment of the R&D centres) to March 2013, the number of completed ITSP projects and those with licences granted to commercial entities for authorised use of the centres' technologies or know-how are as follows:

Table 6

ITSP R&D centre projects with licences granted

(April 2006 to March 2013)

R&D centre	Number of completed projects	Number of completed projects with licences granted
APAS	48	7 (14.6%)
ASTRI	214	86 (40.2%)
HKRITA	49	13 (26.5%)
LSCM	31	6 (19.4%)
NAMI	47	7 (14.9%)
Overall	389	119 (30.6%)

Source: *R&D centre records*

Remarks: *An R&D centre may grant two types of licences, namely exclusive licences and non-exclusive licences.*

4.5 According to the ITC, performance of the R&D centres in commercialisation can be measured by the amount of licence fee (Note 7) generated from the licences granted. However, Audit found that in the years from 2009-10 to 2012-13, total licence fee income collected per year by the five R&D centres altogether ranged from $0.2 million to $12 million, representing less than 1% to some 9% of the total R&D project costs for the year (see Table 7).

Note 7: *Licence fee includes an up-front fee and/or royalties which are based on a percentage of the licensee's net sales or an amount per unit of the licensed product sold.*

Table 7

Licence fee income of R&D centres
(2009-10 to 2012-13)

R&D centre	2009-10 (Note 1)		2010-11		2011-12		2012-13	
	Gross (Note 2) ($'000)	Net (Note 2) ($'000)	Gross ($'000)	Net ($'000)	Gross ($'000)	Net ($'000)	Gross ($'000)	Net ($'000)
APAS	–	–	–	–	100.0	50.0	50.0	7.5
ASTRI (Note 3)	84.9	84.9	6,853.9	6,853.9	6,658.4	6,658.4	7,379.6	7,379.6
HKRITA	50.0	35.0	5,159.2	861.6	560.3	172.3	2,883.0	808.1
LSCM	–	–	1.6	0.5	65.0	30.0	161.0	143.0
NAMI	55.0	46.8	35.5	34.7	–	–	350.8	328.0
Total licence fee (a)	189.9		12,050.2		7,383.7		10,824.4	
Total R&D project costs (b)	28,762.6		140,015.3		251,934.7		293,142.6	
Percentage of return: (c) = (a) ÷ (b) × 100%	0.7%		8.6%		2.9%		3.7%	

Source: R&D centre records

Note 1: The R&D centres were established in 2006 and it usually took two years to complete an R&D project (i.e. the results of a project could be commercialised and generated licence fee income at least two years after commencement of the project). As such, Table 7 did not include licence fee income for the period prior to 2009-10.

Note 2: Licence fee is normally shared between an R&D centre (that drives and coordinates applied R&D) and a research institute (that conducts the R&D work) according to a pre-determined ratio (see para. 4.9 for details). The gross licence fee refers to the total licence fee received and the net licence fee refers to the amount accrued to the R&D centre after sharing the licence fee with the research institute. As the R&D centres are publicly funded, the net licence fees have to be reverted by the centres to the Government.

Note 3: ASTRI does not have to share licence fees with the research institutes because it usually engages research institutes to conduct R&D work by paying them a contract-out fee.

4.6 Audit examined the commercialisation of 15 ITSP R&D centre projects, three from each of the five R&D centres. Audit has the following findings:

(a) there were differences among R&D centres' practices in setting licence fees (paras. 4.7 and 4.8);

(b) there were variations in income sharing arrangements between the R&D centres and the public research institutes (paras. 4.9 to 4.12); and

(c) there were scope for improvement in the collection of licence fees (para. 4.13).

Audit considers that the ITC needs to step up its control over the commercialisation of projects handled by the R&D centres.

Practices of R&D centres in setting licence fees

4.7 As shown in Table 8, the R&D centres have adopted different practices for setting their licence fees.

Table 8

Practices for setting licence fees adopted by R&D centres

R&D centre	Practice
APAS	• Factors considered include market response, project cost, the applicant's background, proposed licensing terms and sales forecast. • Licencees who have sponsored the project are not required to pay up-front fee. • Licence fees were approved by the Commercialisation Committee of APAS. Since merger with the HKPC, licence fees are approved by the Business Development Committee of the HKPC.
ASTRI	• Factors considered include the applicant's credit worthiness, justifications on proposed licence fee, licensing period, target market, territory for use of licence and relevant cost incurred by ASTRI. • Approved by the CEO. • Approval by the Board of Directors is required for licence fee income exceeding $7.5 million in each of the first three years of the licensing period.
HKRITA	• In August 2013, HKRITA informed Audit that it had conducted trial use of a methodology to set licence fee with reference to the project cost, number of potential licensees, market potential and support from research project team, etc. • Provides discount on licence fee based on the industry sponsors' share of contribution. • Approved by the Board of Directors.
LSCM	• Factors considered include market size, number of potential licensees, project cost and revenue forecast. • 50% discount on licence fee offered to industry sponsors. • Approved by the Finance and Administration Committee.
NAMI	• Factors considered include the sales income estimated by the applicant for the proposed licensing period, the recovery of project cost, nature of technology and level of capital investment. • Approved by a panel of management staff, the Technology Committee, or the Board of Directors depending on the types of licences and projects.

Source: R&D centre records and Audit enquiries

4.8 The setting of licence fee is a complicated matter as it involves assumptions and variables and would require techniques such as market research and discounted cash flow analysis. The factors taken into consideration and approaches used in setting licence fees varied among the centres. In the case of HKRITA, it was only in 2013 that it started to use a methodology (on a trial basis) for setting its licence fees. For APAS, HKRITA and LSCM, they offer preferential terms to industry sponsors as a matter of course. Audit considers that the R&D centres' system of setting licence fees can be rationalised as follows:

(a) principles and guidelines should have been set by the ITC, in collaboration with the R&D centres, for determining the licence fee to be collected, and any significant deviations from the principles and guidelines should be approved by the centres' Board of Directors and/or the ITC; and

(b) there should be proper documentation on the rationale and the commercial considerations in setting licence fees. Audit noted that there were instances where the rationale and commercial considerations were not properly documented (Cases 1 and 2 are examples).

Case 1

1. In May 2011, HKRITA completed an ITSP project at a project cost of $1.9 million. In June 2011, HKRITA's Board of Directors approved a licence fee of $50,000 for use of the technology by licensees.

Audit comments

2. Audit noted that the licence fee of $50,000 represented only 2.6% of the project cost of $1.9 million. However, there was no explanation on the basis of how the licence fee was determined.

Source: Audit analysis of HKRITA records

Case 2

1. In November 2008, HKRITA completed an ITSP project at a project cost of $2.3 million. The licence fee for the technology developed was calculated on the basis of the number of spindles owned by the licensee. For example, the licence fee would be $1 million for 50,000 spindles and $2 million for 50,001 to 200,000 spindles.

2. In September 2010, a free licence was granted to the company which owned the earlier generation of the technology, on the basis that the company had invested some $5.7 million to develop the technology.

Audit comments

3. In June 2010, the research institute which conducted the R&D work had promised HKRITA that it would verify the correctness of the amount of the $5.7 million. Audit found no evidence that the verification had been performed. There was no evidence that HKRITA had followed up with the research institute on the issue.

Source: Audit analysis of HKRITA records

Sharing of licence fee income

4.9 Income on licence fees is usually shared between the R&D centre and the research institute such as a local university. Audit found that in the absence of principles/guidelines set by the ITC, the income sharing arrangements varied among the centres (see Table 9 below).

Table 9

Licence fee income sharing arrangements of R&D centres

R&D centre	Income sharing arrangement
APAS	The party who commercialised the relevant IP and concluded the agreement with the licensee would share 70% of licence fee.
ASTRI	Not applicable as ASTRI usually engages research institutes to conduct R&D work by paying them a contract-out fee.
HKRITA	The party who concluded an agreement with the licensee would share 70% of licence fee.
LSCM	The party who concluded an agreement with the licensee would share 70% of licence fee.
NAMI	The research institute shares 15% or 30% of sales revenue depending on whether the institute has put in project resources.

Source: R&D centre records

Audit could not ascertain the bases on which the sharing arrangements in Table 9 are determined.

4.10 In Case 3, Audit was unable to ascertain whether the sharing arrangement agreed between the R&D centre and the public research institute was fair and whether the public interest was protected (Note 8).

Note 8: *R&D projects are substantially funded by the Government and according to the relevant agreements, licence fee incomes received by the R&D centres have to be ploughed back to the Government.*

Case 3

1. In June 2009, HKRITA agreed that a research institute should take the lead in the commercialisation of the project, and that the usual income-sharing ratio of 30:70 (70% of the licence fee accruing to the party who concluded the licensing agreement with the licensee which, in this case, was the research institute) should apply (see Table 9).

2. The research institute appointed a company to act as its agent to deal with HKRITA on commercialisation of the project. From September to December 2010, the agent granted licences to three companies for $5 million. In May and November 2012, it granted licences to another two companies for $3 million.

3. In March 2011, contrary to the pre-determined sharing ratio of 30:70, the research institute proposed to share income with HKRITA at a ratio of 15:85. HKRITA accepted the proposal. In May 2011, HKRITA and the agent signed an agreement on this sharing arrangement.

4. According to the agreement, HKRITA should be given 15% of licence fee income, taking into account its "funding contribution" of $2.38 million to the project to the "total development funding amount" (Note) of $16.17 million.

5. The agreement took retrospective effect and covered all the licensing deals finalised under the project.

Audit comments

6. Audit had reservations on the appropriateness of the income-sharing ratio of 15:85 because HKRITA could not produce the supporting documents for the total development funding amount of $16.17 million to justify the deviation from the pre-determined ratio of 30:70.

Source: Audit analysis of HKRITA records

Note: The "funding contribution" of $2.38 million of HKRITA was the grant from the ITF for the project cost. The project was for the development of a new generation of a technology. The "total development funding amount" referred to the costs borne by a private sector company and research institute(s) for the development of technologies of previous generations.

4.11 In August 2013, the ITC promulgated a set of revised guidelines on IP arrangement for ITSP projects (the IP Guidelines). The purpose of the IP Guidelines was to provide local research institutes (including the R&D centres and other research institutes such as the local universities) a clear, transparent and fair, yet flexible, framework for their IP arrangements. According to the ITC:

(a) it encouraged the respective Board of Directors of the R&D centres to, having regard to the IP Guidelines, develop their own commercialisation policy and procedures taking into account the unique circumstances for individual projects; and

(b) it has not set a fixed formula for the level of licence fees and other terms of licensing such as benefit-sharing. The R&D centres may offer more favourable terms to industry sponsors commensurate with their level of contribution with a view to recognising the industry sponsors' support and assisting the R&D centres to build up a good client base. It is the responsibility of the local research institutes to ensure that interested companies are treated on an equitable and proportional basis and in accordance with the institutes' policies and practices.

4.12 According to the IP Guidelines, the R&D centres can enjoy a high degree of flexibility in the setting of licence fees and sharing of licence fee income (Note 9). Audit appreciates that not all achievements in innovation and technology can be measured in monetary terms and the ITC is not seeking to maximise monetary return. Nonetheless, in the light of the low level of licence fee generated and the audit findings in paragraphs 4.8 to 4.10, there is scope for the ITC to step up monitoring and control, and enhance consistency and transparency in the way the R&D centres enter into licence fee arrangements with third parties. In particular, Audit considers that the ITC should:

(a) in collaboration with the R&D centres, develop a set of principles and policies on the calculation of the costs associated with inventing and marketing IP rights, and on the determination of how such costs should be recouped through licensing the IP rights;

Note 9: *According to the IP Guidelines, the R&D centres only need to seek prior approval of the ITC if exclusive licence is granted, or under special circumstances not covered by the guidelines (e.g. spin-offs).*

(b) develop a comprehensive system to capture the information on the income generated from R&D centre projects; and

(c) periodically review selected cases of licence fee setting and income sharing to ensure that they comply with the principles and policies.

Collection of licence fees

4.13 An R&D centre is usually responsible for collecting licence fees from licensees, sharing the income between itself and the research institute and distributing the net income to the Government. Of the 15 projects examined (see para. 4.6), Audit found that in six projects, the centres had not taken adequate action to collect the licence fees. Examples are shown in Cases 4 to 6 below.

Case 4

1. In December 2010, NAMI granted to a company a three-year licence for the use of its technology in the production of sensors. In return, the company would pay royalties. The company was also required to provide to NAMI a statement setting out the calculation of royalties and pay the royalties accordingly.

2. In December 2010, a customer of the company informed NAMI that it had placed an order of 10,000 sensors with the company. Accordingly, in March 2011, NAMI sent an invoice to the company demanding royalty payment of $5,500. The company settled the invoice. Up to May 2013 (time of audit inspection), NAMI had not received any royalty statements or further payments from the company (in addition to the $5,500 payment for the 10,000 sensors). Nevertheless, NAMI had not taken any follow-up action.

Audit comments

3. Given the fact that NAMI was aware of the sales activity in 2010, NAMI should have taken more proactive follow-up action to confirm whether there was any additional income arising from the licence.

Source: Audit analysis of NAMI records

Case 5

1. In June 2011, APAS completed a project for developing a charging station for electric vehicles. In the same month, APAS granted a licence to a company for five years from the date of first sale of the charging station. The company was required to pay royalties based on the number of units of the stations produced and sold. The company was also required to submit, regardless of whether there were actual sales or not, a royalty statement every three months after the first sale of the station.

2. In the period from June 2011 to May 2013, APAS did not receive any royalty statements, nor did it follow up with the company. On the day before Audit's visit to APAS on 28 May 2013, APAS sent an e-mail to the company to enquire about the sales of the charging station.

Audit comments

3. APAS should have followed up on the sales and related royalties on a regular basis.

Source: Audit analysis of APAS records

Case 6

1. In September 2010, ASTRI granted to a company eight licences covering eight technologies developed by an ITSP project for a licence period of ten years.

2. Under the licence agreement, the company was required to:

(a) keep accurate books of account which should be open for inspection by ASTRI during business hours;

(b) submit to ASTRI within 30 days after the end of each royalty payment interval (every four months in the initial three years and every six months thereafter) a royalty statement (setting out the quantity of the units sold and the sales revenue of the units) prepared and certified by the company's accountant; and

(c) have the royalty statements audited by the company's auditor at the end of each calendar year and submit the audited statement to ASTRI.

Audit comments

3. Audit found that in the period from 30 September 2010 (the effective date of the licences) to 30 June 2013:

(a) royalty statements were only received up to 30 June 2012;

(b) no audited statements were submitted by the company; and

(c) there were delays, ranging from 10 days to 9.5 months, in receiving royalty payments.

4. Following Audit's enquiry, ASTRI contacted the company on 5 September 2013 and received the outstanding 5% of the royalty payment on 12 September 2013. ASTRI also contacted the company on 10 September 2013 regarding the submission of the outstanding royalty statements and audited statements.

Source: Audit analysis of ASTRI records

Commercialisation of ITSP non-R&D centre projects

4.14 In the period from 2009-10 to 2012-13, the ITC had managed the following number of ITSP non-R&D centre projects and their actual project costs.

Table 10

ITSP non-R&D centre projects
(2009-10 to 2012-13)

Year	Number of projects	Actual project costs ($ million)
2009-10	116	138
2010-11	65	122
2011-12	79	124
2012-13	84	132
Total	344	516

Source: ITC records

As shown in Table 3 in paragraph 1.14, from 1999-2000 to 2012-13, ITF expenditure on ITSP non-R&D centre projects managed by ITC directly amounted to $2.8 billion, comprising $1.8 billion for ITSP projects before the R&D centres were set up in 2006 and $1 billion since then.

4.15 However, in response to Audit's enquiries, the ITC indicated that it did not have a system to capture commercialisation information on the ITSP non-R&D centre projects. The ITC also indicated that since the setting up of the ITF, only 12 ITSP non-R&D centre projects which were completed in the period from September 2004 to August 2012 had been commercialised. Audit checked five of the 12 projects and found that:

(a) for three projects, the records indicated that there was no commercialisation; and

(b) for one project, according to the ITC's records, the project results had been "marketed" through three overseas companies. However, the ITC had not followed up with the licensees to ascertain whether the results had actually been sold in these markets.

4.16 In respect of the number of completed ITSP non-R&D centre projects with licences granted and the amount of licence fee income generated from the projects, the ITC informed Audit that it had not kept track of such information (Note 10).

4.17 Audit noted that the R&D centres had kept track of the number of completed projects with patents registered. In the period from April 2006 to end of March 2013, of the 389 completed R&D centre projects, 210 (54%) had patents registered. However, Audit found that the ITC did not keep track of similar patent information in respect of completed non-R&D centre projects it managed.

4.18 In order to measure the progress made in promoting and supporting applied research by the use of the ITF, it is imperative that the ITC develops and maintains a system to track the key performance statistics of the ITSP R&D centre projects managed by the R&D centres and equally the key performance statistics of the ITSP non-R&D centre projects that it manages. Such information should be summarised and regularly submitted to the senior management of the ITC and the Steering Committee on Innovation and Technology.

Note 10: *The ITSP non-R&D centre projects are conducted by designated public research institutes or private sector companies. For projects conducted by the public research institutes, the ITC does not require a share of the licence fee income. The income can be retained by the institutes for further R&D and other public causes. Since 2006, only one project has been conducted by private sector companies.*

Commercialisation of SERAP project results

Funding conditions

4.19 SERAP provides pre-venture and venture capital on a dollar-for-dollar matching basis to small technology-based and entrepreneur-driven companies to undertake R&D projects that have a reasonable chance of success in the development of a new product, process or service that can be brought to the market. The maximum SERAP funding for each project is $6 million. In general, funds are disbursed to the recipient companies on a quarterly basis, subject to satisfactory progress of the project.

4.20 Funding is recouped from the recipient company if the SERAP project is commercially successful, that is, the company is able to generate revenue from the project or attract follow-on investment by a third party. To further facilitate the commercialisation of project results, in April 2012, the Government expanded the funding scope of SERAP to include industrial designs, testing and certification of prototypes and clinical trials.

4.21 According to the SERAP guidelines and Fund Agreement, the following will be recouped from the recipients of the ITF until the Government's contribution is repaid in full:

(a) 5% of the gross revenue generated from the project; and

(b) 10% of investment made to the recipient company by a third party.

Overall recoupment position

4.22 SERAP was launched in November 1999. Up to 31 May 2013, the Government had disbursed $334 million to fund 372 SERAP projects, of which 239 projects had been completed (Note 11). The first recoupment was received in 2003-04. Up to 31 May 2013, the cumulative amount of SERAP funds recouped was $22.8 million ($8.9 million from revenue generated and $13.9 million from investment received). The recoupment of $22.8 million ($21.6 million from 239 completed projects and $1.2 million from projects which did not proceed to phase II — see Note 11) represented an overall recoupment rate of 7% of the $334 million SERAP fund disbursed.

4.23 Audit conducted an analysis of the recoupment of the 239 completed SERAP projects (see Figure 1). Audit noted that:

(a) for 145 (60%) projects, no recoupment was received. The Government's total contribution for them was $170 million;

(b) for 61 (26%) projects, the recoupment rates were 10% or less. The Government's total contribution was $78 million, but only a total of $1.4 million (1.8%) was recouped;

(c) for 22 (9%) projects, the recoupment rates ranged from 11% to 89%. The Government's total contribution was $28 million. The total amount recouped was $8.1 million; and

(d) for the remaining 11 (5%) projects, the Government's contribution had been fully repaid (the total amount was $12.1 million).

Note 11: *As at 31 May 2013, of the 372 projects:*

(a) 239 were completed;

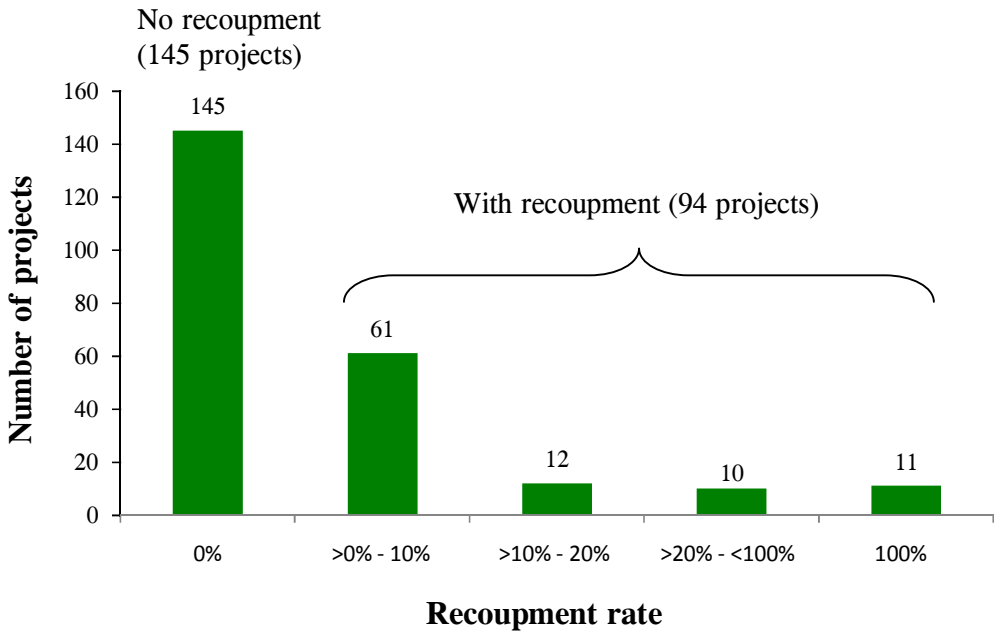
(b) 98 completed phase I, but did not proceed to phase II (prior to 1 April 2008, each project had to be conducted in two phases);

(c) 11 were terminated/withdrawn; and

(d) 24 were in progress.

Figure 1

Recoupment of 239 completed SERAP projects (31 May 2013)



Source: Audit analysis of ITC records

4.24 Audit noted that of the 239 completed projects, the recipient companies of 31 projects had been dissolved. The total amount of funds disbursed to these companies was $38.7 million, but only $0.8 million (2.1%) had been recouped.

Monitoring of recoupment

4.25 According to the SERAP guidelines and Fund Agreement, recipient companies are required to report to the ITC:

(a) annually the revenue generated from the completed project (Note 12); and

Note 12: *For projects approved before 1 April 2012, recipient companies had to report on a half-yearly basis.*

(b) within one month upon receipt of third party investments.

4.26 According to the standing practice of the ITC, it sends reminders every half-year (in January and July) to recipient companies of completed projects, reminding them to report revenue generated and investments received. For those reminders returned by post undelivered, the ITC will obtain the latest postal addresses from the Companies Registry.

4.27 The SERAP guidelines and Fund Agreement stipulate that recipient companies need to provide documents to support the reported amounts of revenue generated and investments received. Furthermore, upon request of the ITC, recipient companies have to provide further documentary proof (such as revenue statements, audited accounts and information on capital and shareholding) to substantiate the reported amounts.

4.28 The Fund Agreement also prescribes the time limit for making recoupment payments (e.g. within two months of receipt of investments). If a payment is not made within the prescribed time limit, there will be a late penalty of 5% on the amount due and unpaid. A further penalty of 10% and 15% will be imposed for amounts outstanding for more than six months and 12 months respectively.

4.29 Audit examined the adequacy of the ITC's work in following up recoupment of the Government's contribution in 20 completed SERAP projects. Audit's examination revealed that:

(a) ***Reminders omitted.*** In 12 of the 20 projects, in the period from project completion dates to 31 January 2013, there were cases where the ITC staff had not sent out reminders to the recipient companies for one or more years. Some examples are given in Table 11.

Table 11

Cases of reminders not sent to SERAP recipient companies

Company	Fund disbursed ($ million)	Project completion	Years in which reminders not sent	First recoupment payment received
A	2.0	July 2001	2002 to 2008	• Received in December 2010 • Amount: $8,660 • Period covered: January to August 2010
B	1.9	April 2002	2003 to 2008	• Received in November 2010 • Amount: $20,977 • Period covered: April 2002 to July 2009
C	1.9	December 2002	2003 to 2006 and 2008	• Received in September 2011 • Amount: $45 • Period covered: April 2010 to March 2011

Source: Audit analysis of ITC records

For Company A and Company C, the recipient companies reported to the ITC revenue/investments after they had received reminders. However, in periods where no reminders were sent, they did not report to the ITC. It was therefore not known whether there were any revenue/investments during these omitted periods. It is all the more important for the ITC to send reminders to these companies regularly;

(b) ***Unsatisfactory rate of response to reminders.*** The ITC experienced difficulties in getting responses to the reminders sent to the companies. For the 20 projects examined, the ITC sent 124 reminders but received only 71 responses. The response rate was 57% only. For three projects, the recipient companies did not respond to any of the reminders. Audit noted that the ITC had not taken any further actions on companies which did not respond (such as making phone enquiries or paying visits to the companies);

(c) ***Supporting documents not provided.*** Of the 20 projects examined, 16 projects had reported revenue/investments. For these 16 projects:

(i) supporting documents (such as copies of invoices and contracts) were provided for 7 (44%) projects; and

(ii) regarding the remaining 9 (56%) projects, there was no supporting documents, or the documents provided were statements prepared by the recipient companies themselves (such as a calculation sheet showing how the amount of revenue reported was arrived at). The ITC, however, had not taken any follow-up action; and

(d) ***Collection of recoupment payments.*** Of the 20 projects examined, 15 (75%) had delays in paying the recoupment of revenue/investments.

4.30 In examining the recoupment of SERAP projects, Audit found that the ITC needs to be more vigilant in tracking the revenue and investments received by recipient companies and take more initiatives in detecting suspected abuses and safeguarding the public money (see Cases 7 to 9 at Appendices A to C). Cases 7 and 8 are two of the five cases (out of the 20 project cases examined by Audit) where Audit found that there were share allotments registered with the Companies Registry (i.e. indicating that there were third party investments). However, neither the ITC was informed of the investments by the recipient companies, nor had it monitored proactively third party investments made to the companies.

PART 5: WAY FORWARD

5.1 This PART examines the way forward for the ITF.

Comprehensive review of ITF

5.2 In June 2013, the ITC informed the LegCo Panel that the ITF was expected to be fully committed in around 2015-16 and by that time, the ITF would also have been in operations for more than 15 years. The ITC considered it opportune to conduct a comprehensive review on the ITF and explore areas of improvement.

5.3 As mentioned in PART 2, when the ITF was set up, the Administration committed to review the ITF periodically, say, once every three years and the Administration indicated that periodic review of the ITF would make it better meet its mission and operate more efficiently. Such periodic review will enable the ITF to keep up with the changing needs and expectations of the community.

5.4 In conducting the review, the ITC needs to take on board the audit findings and recommendations in this Audit Report as well as those in another Audit Report "Innovation and Technology Fund: Management of projects" (see para. 1.15 (b)). As the R&D centres have been set up for more than seven years (see PART 3), it is important for them to become more proactive in commercialisation and technology transfers. Their performance should be assessed by taking into account the number and extent of technology breakthrough and upgrades, income from licensing fees, royalty payments and contract research, and other quantitative and qualitative performance indicators (see also para. 2.18). The ITC may also need to set more aggressive performance targets for them.

5.5 The ITC also needs to develop a system to track the key performance statistics of the ITSP R&D centre projects as well as the ITSP non-R&D centre projects (see para. 4.18) and SERAP projects that it directly manages. Such information should be summarised and submitted on a regular basis to the senior management of the ITC and the Steering Committee of Innovation and Technology for review.

Audit recommendations and response from the Administration

PART 2: Review of ITF and performance monitoring

5.6 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **conduct a comprehensive review of the ITF without delay and work out a timetable with a target completion date for the review (see para. 2.10);**

(b) **review and improve the existing mechanism for conducting post-completion evaluation of ITSP projects, and take steps to establish a more structured and coordinated approach in assessing the effectiveness of the projects in achieving their R&D objectives (see para. 2.15); and**

(c) **review and improve the existing performance measurement of the ITF, including the setting of more performance targets, on how the ITF has contributed to the industry (see para. 2.19).**

5.7 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) the audit observations and recommendations are timely for the ongoing comprehensive review of the ITF, which commenced in mid-2013. The ITC will have due regard to the audit recommendations when conducting the review;

(b) since the establishment of the ITF in 1999, the ITC has been reviewing the operation of the ITF's various programmes from time to time and made improvements at various junctures in the light of experience, feedbacks from stakeholders as well as changing circumstances. This is an ongoing process and as a result different measures of improvement had been introduced over the years. For instance, since the introduction of the three-tier funding framework in 2005 and the establishment of the

R&D centres in 2006, reviews have been conducted by the ITC including those pertaining to the ITF mechanism and R&D centres. For instance:

(i) in 2008, the scope of SERAP was widened to cover companies with 20 to 99 employees and the two-phase system has been changed to a single-phase system;

(ii) in November 2010, a new strategy was devised to develop a more conducive ecological environment to facilitate the realisation of R&D results;

(iii) in March 2011, an enhanced Public Sector Trial Scheme was introduced to provide additional funding for the production of tools/prototypes/samples and the conducting of trials in the public sector;

(iv) in April 2012, the funding ceiling of SERAP was increased from $4 million to $6 million and the scope widened; and

(v) in July 2012, the Public Sector Trial Scheme was extended to all ITF-funded projects.

The recommendations and improvement measures arising from the reviews had been rolled out successfully in stages in the past few years;

(c) the ITF is expected to be fully committed in around 2015-16 (based on the latest estimates of the number and expenditure levels of the projects to be approved in the coming few years) and by that time, the ITF would have been in operation for more than 15 years. The ITC considered it opportune to conduct a comprehensive review on the ITF and explore areas for improvement. The ITC aims to complete the comprehensive review and identify improvements to the ITF in good time before the remaining funds of the ITF is fully committed. The scope of the review will cover the funding scope and mechanism of the ITF, support for private sector R&D, IP arrangements for projects funded by the ITF and the evaluation mechanism to better assess and monitor the effectiveness of the ITF;

(d) in the past, much emphasis was placed on the assessment of project applications and she agreed entirely that evaluation of completed projects is equally important. Hence, earlier in 2013, the ITC has, in consultation with the R&D centres, developed a more comprehensive/systematic post-project evaluation framework to better assess the results of completed ITSP projects as well as keep track of the progress of realisation and commercialisation of R&D results (see para. 2.14). A trial run of the new evaluation framework among the R&D centres has just been completed. In the light of the outcome of this trial run as well as the latest audit recommendations, the ITC will further review the evaluation framework to see what further improvements should be made; and

(e) the ITC will review the existing situation as well as performance indicators to see how to better assess the effectiveness of the ITF in upgrading the innovation and technology of the local industry. The ITC will suitably take into account the practices of other places as well as the audit recommendations. The ITC would, however, like to submit that suitable flexibility should be adopted in designating and evaluating such indicators, in the light of the quickly changing circumstances in the innovation and technology environment as well as the prevailing state of the economy.

PART 3: Performance of R&D centres

5.8 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **conduct a cost-effectiveness review of the five R&D centres, taking into account the performance results Audit identified (see paras. 3.9 to 3.19);**

(b) **conduct a review on the target level of industry contribution for the R&D centres, and review the feasibility of achieving the self-financing target for individual centres in the longer term (see paras. 3.6 and 3.19); and**

(c) **set realistic performance targets, including quantitative and qualitative ones, on the operation of the R&D centres (see para. 3.19).**

5.9 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) since the establishment of the R&D centres, the ITC has been monitoring the operation of the centres including their operating costs, number of R&D projects undertaken, amount of R&D expenditure, etc., and reported them to the LegCo Panel annually;

(b) the ITC recognises that the annual operating costs of the R&D centres still constitute a sizable proportion of their annual R&D expenditure. As part of the comprehensive review of the R&D centres for their first five years in operation, the ITC conducted a review on the cost-effectiveness of the R&D centres in 2010. Findings of the review were presented to the LegCo Panel on 16 November 2010. The outcome of the review indicated that the levels of operating expenditure of the R&D centres were generally reasonable as they had been supporting a wide range of activities including direct research, building R&D platform, commercialisation, etc., and were not limited to the expenditure for the administrative, financial and management staff. The ITC will continue to review the cost-effectiveness of the R&D centres and report to the LegCo Panel annually;

(c) the ITC would continue to review and adjust from time to time the target level of industry contribution for the R&D centres having regard to their actual experience and performance (see paras. 3.6 and 3.7); and

(d) the ITC will continue to work closely with the respective Boards of Directors/management of the R&D centres to review their existing set of performance indicators and targets to better measure their performance. The ITC will also review whether it is realistic to expect R&D centres to achieve the self-financing target given the experience in the past few years as well as a projection of their future operations.

PART 4: Commercialisation of ITF project results

5.10 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **in collaboration with the R&D centres, co-develop a set of principles and policies on the setting of licence fees, sharing and collection of licence fee income for both ITSP R&D centre projects and ITSP non-R&D centre projects (see para. 4.12);**

(b) **periodically review on a sample basis cases of licence fee setting and income sharing to ensure that they comply with the laid down principles and policies (see para. 4.12);**

(c) **set up a proper system to monitor and follow up on the commercialisation of ITSP non-R&D centre projects (see paras. 4.17 and 4.18);**

(d) **consider reporting regularly the progress of commercialisation of ITF project results to senior management of the ITC and the Steering Committee on Innovation and Technology (see para. 4.18);**

(e) **step up the ITC's follow-up action on recoupment of the Government's contribution to SERAP projects (see paras. 4.29 and 4.30), including:**

(i) **regularly issuing reminders to all recipient companies about revenue and investments received;**

(ii) **taking timely follow-up action on companies which had failed to report revenue/investments;**

(iii) **for companies which did not comply with the Fund Agreement, consulting the Department of Justice about the feasibility of instigating legal action against them; and**

(iv) **consulting the Department of Justice for scope to improve the terms of the Fund Agreement to ensure that the Government's interest is protected; and**

(f) **take follow-up action on suspected under-recoupment SERAP cases (see para. 4.30).**

5.11 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) the ITC has promulgated in August 2013 a set of revised guidelines on IP arrangements for ITSP projects (see paras. 4.11 and 4.12). The ITC will continue to improve the guidelines in collaboration with the R&D centres and other local research institutes in the light of actual experience;

(b) the ITC will also review licensing and benefit-sharing cases periodically as suggested by Audit, with a view to further improving the arrangements;

(c) while the ITC has been monitoring the progress of commercialisation of non-R&D centre projects manually, the ITC will improve the current administrative arrangements to make them more systematic and comprehensive;

(d) as mentioned in paragraph 5.7(d) above, the ITC has earlier in 2013 developed a more comprehensive post-project evaluation framework. In the light of the current audit recommendations, the ITC will further review the evaluation framework to see what improvements should be made. The new framework will initially be applied to ITSP projects undertaken by R&D centres. Having regard to the experience of the new framework for R&D centre projects, it will be extended to non-R&D centre projects in due course; and

(e) on monitoring of recoupment under SERAP:

(i) regular reminders will be sent;

(ii) for outstanding cases, the ITC will adopt a balanced approach to adequately protect the interests of the Government while acting appropriately and sympathetically to the companies concerned. The ITC will assess if there are reasonable explanations or cases of hardship and devise an appropriate way forward, e.g. demanding repayment, setting the timeframe for repayment, consulting the Department of Justice about the feasibility of instigating legal action and, in cases where recovery action is not warranted, seeking approval for write-off in accordance with prevailing government procedures. If deemed necessary, the ITC will also consult the Department of Justice for scope to improve the terms of the Fund Agreement to ensure that the Government's interests are protected; and

(iii) indeed, after SERAP has been in place for over a decade, the ITC intends to comprehensively review it to see if it can suitably/adequately provide support to the industry in present-day circumstances, taking into account all factors including the measures adopted to support innovation and technology in places outside Hong Kong.

Appendix A
(para. 4.30 refers)

Case 7

1. In October 2001, the ITC approved the project of Company C (see Table 11 in para. 4.29(a)). In December 2002, the project was completed. The total fund disbursed was $1.9 million. From 2003 to 2006, the ITC did not send out any reminders to Company C. In response to the ITC's reminder sent in February 2007, Company C reported that there was revenue of $10,000 generated from the project deliverables, and a joint-venture company had been established with another company to manufacture and market such deliverables. Company C did not provide any documents to substantiate the revenue reported. Instead, it provided a copy of the Certificate of Incorporation of the joint-venture company and the patent registration of the deliverables. In May and August 2007, the ITC enquired of Company C about the follow-on investment but received no response. From August 2007 to January 2011, the ITC sent five reminders to Company C. Again, there was no response.

2. In July 2011, the ITC sent a reminder to Company C. In August 2011, Company C responded and reported, without providing any supporting documents, that a revenue of $900 was received for the period from 1 April 2010 to 31 March 2011. The ITC did not make any enquiries (such as whether there was any revenue/investments prior to April 2010). In September 2011, the ITC demanded a recoupment amount of $45 (being 5% of $900), which was received in the same month. In February 2012, in response to the ITC's reminder sent in January 2012, Company C submitted a nil return for the period April 2011 to January 2012. Company C, however, did not respond to the ITC's reminders sent in July 2012 and January 2013.

3. In July 2013, Audit conducted a company search on Company C. According to the search results, from 2000 to 2003 and in 2010, there were investments received as evidenced by shares allotted to third parties amounted to $2.9 million. However, such investments had not been reported by Company C to the ITC.

Case 7 (Cont'd)

Audit comments

4. The ITC should have:

(a) sent reminders to Company C in a timely manner;

(b) taken more proactive actions (e.g. making telephone calls or conducting visits) to follow up with Company C in cases where it did not respond to the reminders;

(c) required Company C to provide supporting documents for the reported revenue; and

(d) regularly conducted company search to identify any unreported investments received by recipient companies.

Source: Audit analysis of ITC records

Appendix B
(para. 4.30 refers)

Case 8

1. In June 2008, the ITC approved SERAP fund of $2 million for Company D's project. The project was completed in February 2011. In December 2010, Company D reported to the ITC that it had a follow-on investment amounting to $2 million. Company D did not provide any supporting documents. In February 2011, the ITC asked Company D to pay a recoupment amount of $200,000 (i.e. 10% of $2 million) by March 2011. Company D made the payment in June 2011. In response to the ITC's reminders of July 2011 and January 2012, Company D reported no revenue/investments. It, however, did not respond to the ITC's reminder of July 2012. In January 2013, the ITC sent another reminder but was returned back by the Hong Kong Post for reason of "no such company". Since then, the ITC had not sent any reminders to the new address of Company D until late August 2013.

2. In July 2013, Audit conducted a company search and found that from January 2009 to March 2013, Company D had allotted shares of $5 million to new shareholders. This indicated that there were investments received which should have been reported to the ITC. However, Company D only reported the share allocation of $2 million to the ITC. The remaining $3 million had not been reported.

Audit comments

3. The ITC should have:

(a) requested Company D to provide relevant documents to support the follow-on investments; and

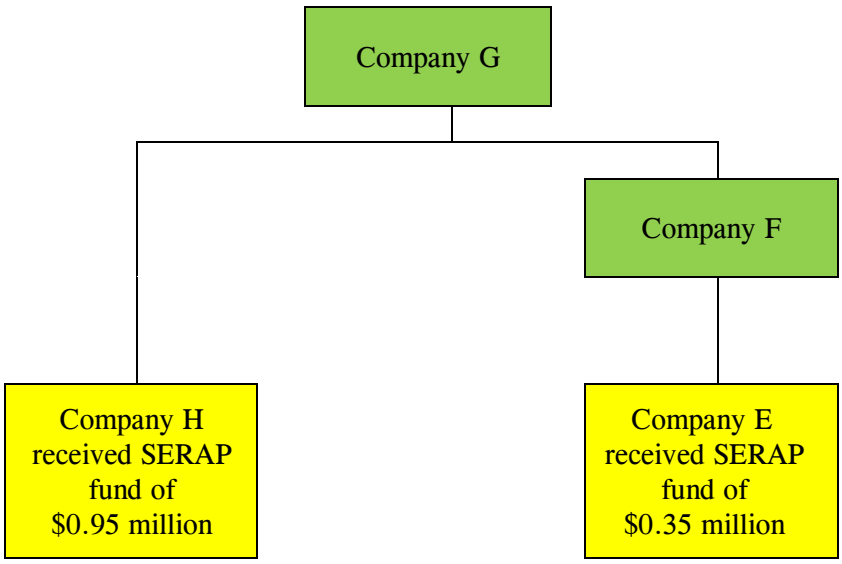
(b) taken proactive action in enquiring and investigating follow-on investments received by Company D (such as by conducting company search to ascertain any allotment of new shares and changes in shareholdings), and monitor the revenues and investments generated by the completed project.

Source: Audit analysis of ITC records

Appendix C
(para. 4.30 refers)

Case 9

1. In October 2003, the ITC approved Company E to conduct Phase I (Note) of a project. The phase was completed in May 2004. Company E was held by Company F. Company F was held by some other companies including Company G. In August 2005, the IP rights, title and benefits associated with the project were transferred (with the ITC's knowledge) from Company F to Company G for a sum of money. In September 2005, Company G set up a wholly-owned subsidiary, Company H. In January 2006, the ITC approved Company H to undertake Phase II of the project. The phase was completed in October 2007. The total fund disbursed for the two phases was $1.3 million (see chart below).



2. In October 2009 and February 2010, Company H reported to the ITC that 4 and 18 units of the product developed were sold. The ITC received some $80,000 as recoupment (i.e. 5% of the revenue).

3. In June 2010, according to a press report found in ITC's records, the CEO of Company H said that in 2009 the company sold some 200 units of the product developed, and was expected to sell 1,000 units each year. There were, however, no records indicating that the ITC had inquired or followed up with Company H on the significant difference between the reported sales and the information mentioned in the press report.

Case 9 (Cont'd)

4. In May 2010, according to media reports found in ITC's records, there was an acquisition of Company H at a consideration of millions of US dollars. In June 2010, the ITC sent an e-mail to Company H enquiring about the acquisition but received no response. From July 2010 to January 2013, the ITC issued six reminders to Company H asking for information on revenue generated and investments received. None of the reminders received a reply. There was no indication that the ITC had taken any further action.

Audit comments

5. In July 2013, in response to Audit's enquiry, the ITC said that it was uncertain whether Company H or its parent company had been acquired. The ITC also said that under the Fund Agreement, the Government could recoup from investments (10%) made to Company H, but not from investments made to Company H's parent company.

6. On Audit's enquiry, the ITC made an enquiry on 2 August 2013 with the management of Company H. The company informed the ITC on 15 and 30 August 2013 that:

(a) there had been no change to the directors, shareholders and share capital, and no share was issued by Company H;

(b) there was no income derived from any third parties' investment to Company H; and

(c) during the period from February 2010 to January 2013, the company sold three units in March 2010. The revenue received was $336,080 (with invoice copies attached).

7. Up to 31 August 2013, the Government could only recoup some $80,000 out of its contribution of $1.3 million. Despite the ITC's repeated reminders since 2010 (see para. 4), the Company H responded only after the ITC addressed its concern to the company's management in August 2013 (see para. 6). Audit considers that the ITC needs to:

Case 9 (Cont'd)

(a) clarify with Company H because it reported to the ITC sales of 25 units (4+18+3 — see paras. 2 and 6(c)) which was significantly lower than the sales volume mentioned in the press report (see para. 3);

(b) demand recoupment payment from Company H for the revenue of $336,080 for products sold (see para. 6(c)); and

(c) in the light of this case, consult the Department of Justice on whether the existing terms of the Fund Agreement can adequately protect the Government's interest. For example, the following matters need to be considered:

(i) the Fund Agreement is silent on whether the ITC can inspect the documents and records relating to the project after it has been completed. In this case, if it had included a provision in the Fund Agreement that the ITC had the right of inspection of revenue/investment records after project completion, the ITC would have been able to conduct post-completion inspections to ascertain whether Company H had any further revenue received;

(ii) since April 2008, a new clause has been added to the Fund Agreement whereby investments made to the parent company of a recipient company are also subject to recoupment. Whilst the Fund Agreement has provided that the parent or holding company incorporated outside Hong Kong is subject to recoupment, there are still some enforcement difficulties. For example, in this case, as Company G (the parent company of Company H) was incorporated overseas, even if the ITC can recoup payment from Company G, it will have difficulty in conducting company search to verify if there has been any investments received by Company G so that it can demand recoupment; and

(iii) the Fund Agreement does not include provisions on controls over the transfer of company ownerships by recipient companies.

Source: *Audit analysis of ITC records*

Note: *Before 1 April 2008, SERAP projects were conducted in two phases.*

Acronyms and abbreviations

APAS	Automotive Parts and Accessory Systems R&D Centre
ASTRI	Hong Kong Applied Science and Technology Research Institute
Audit	Audit Commission
CEDB	Commerce and Economic Development Bureau
CEO	Chief Executive Officer
FC	Finance Committee
GSP	General Support Programme
HKPC	Hong Kong Productivity Council
HKRITA	Hong Kong Research Institute of Textiles and Apparel
ICT	Information and communications technologies
IP	Intellectual property
ITC	Innovation and Technology Commission
ITF	Innovation and Technology Fund
ITSP	Innovation and Technology Support Programme
LegCo	Legislative Council
LegCo Panel	Legislative Council Panel on Commerce and Industry
LSCM	Hong Kong R&D Centre for Logistics and Supply Chain Management Enabling Technologies
NAMI	Nano and Advanced Materials Institute
R&D	Research and development
SERAP	Small Entrepreneur Research Assistance Programme
UICP	University-Industry Collaboration Programme

CHAPTER 10

Innovation and Technology Commission

Innovation and Technology Fund: Management of projects

Audit Commission
Hong Kong
30 October 2013

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 61 of the Director of Audit contains 10 Chapters which are available on our website at http://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

INNOVATION AND TECHNOLOGY FUND: MANAGEMENT OF PROJECTS

Contents

INNOVATION AND TECHNOLOGY FUND: MANAGEMENT OF PROJECTS

Executive Summary

1. Innovation and technology are drivers of economic development and competitiveness. The Government attaches great importance to the significant contribution of innovation and technology to the development of Hong Kong's economy and industries. It launched the Innovation and Technology Fund (ITF) in November 1999 to provide funding support for research and development (R&D) projects that contribute to innovation and technology upgrading in manufacturing and service industries. Up to 30 June 2013, approved ITF project funds amounted to $7.5 billion. The ITF has four programmes, namely the Innovation and Technology Support Programme (ITSP), the Small Entrepreneur Research Assistance Programme (SERAP), the University-Industry Collaborative Programme and the General Support Programme. ITSP and SERAP projects had accounted for 90% of the ITF funds. The former provides funding for comparatively larger applied R&D projects while the latter provides dollar-for-dollar matching grants to small, technology-based and entrepreneur-driven companies. In April 2006, the Government established five R&D centres to coordinate R&D efforts in selected technology focus areas. The Innovation and Technology Commission (ITC) is responsible for administering the ITF. This includes processing applications of R&D projects under the ITF, disbursing funds to successful applicants, and monitoring the progress and achievements of the approved projects.

2. The Audit Commission (Audit) has recently conducted a review of the ITF. The audit findings are contained in two separate Audit Reports: (a) ITF: Overall management (Chapter 9 of the Director of Audit's Report No. 61); and (b) ITF: Management of projects (the subject matter of this Audit Report).

Processing of ITSP applications

3. ***Assessment mechanism and framework.*** Applications falling within the technology focus areas of R&D centres are vetted by the centres while other applications are vetted by the ITC. All applications will be further checked by the ITC for completeness of information and compliance with the relevant ITC guidelines. Applications are assessed under seven components, including innovation and technology component, technical capability and realisation/commercialisation. Audit noted that: (a) the ITC did not set a passing mark for applications vetted by the ITC, and the R&D centres adopted different practices in setting passing marks; and (b) both the ITC and the R&D centres did not identify and set a passing mark for key assessment components failing which would lead to rejection of a project proposal (paras. 2.6, 2.11, 2.14 to 2.18).

4. ***Processing time***. Audit analysed the processing time for applications of ITSP projects approved in the period from January 2011 to June 2013, and found that: (a) for applications of Tier 1 projects (monitored by the R&D centres), the average combined processing time taken by the R&D centres and the ITC ranged from 158 to 222 days. The overall average processing time was 192 days; and (b) for applications of Tier 2 projects and Tier 3 projects (overseen directly by the ITC), the average processing times were 257 and 162 days respectively. Given the rapid development of innovation and technology and keen competition in the industry, long processing time might dampen the interest of researchers, discourage support of the industry, delay the commercialisation of deliverables, and choke the advancement of innovation and technology. The long processing time needs to be shortened so that the R&D project work can commence earlier (paras. 2.3, 2.23 to 2.26).

5. ***In-kind sponsorship.*** For the period from 2006-07 to 2012-13, the R&D centres received $75.4 million in-kind sponsorship for their projects. Industry sponsorship constituted a large percentage of project costs for collaborative projects. However, the ITC has not promulgated detailed guidelines on valuation of in-kind sponsorship (paras. 2.30 and 2.32).

Monitoring of ITSP projects

6. ***Submission of reports and audited accounts.*** Applicants of ITSP projects have to submit to the ITC for approval: (a) half-yearly Progress Report within one month from the end of the period covered by the Report; (b) Final Report within two months after project completion; (c) annual audited accounts within three months after the end of the financial year; and (d) final audited accounts within three months after the project completion date. Audit analysed the submission of the Reports and accounts for the period from April 2006 to June 2013 and found that a large percentage of the Reports and accounts were submitted late (paras. 3.2, 3.4 to 3.8).

Processing of SERAP applications

7. ***Checking of applications.*** A company is eligible to apply for funding support from SERAP if it is incorporated in Hong Kong under the Companies Ordinance (Cap. 32), has less than 100 employees in Hong Kong, is not a large company, and is not a subsidiary of or significantly owned/controlled by a large company. The ITC only verifies the first eligibility criterion. For the other three criteria, the ITC relies on the information provided by the applicant without requiring the submission of any supporting documents. Audit examined 26 projects approved in 2011-12 and 2012-13. Audit noted that on average, 62% of the total project expenditure was on manpower. However, there were cases with large variations in the monthly salaries of similar proposed project posts, and cases where the applicants did not state the minimum qualifications/experience required of the posts in the budgets (paras. 4.8, 4.10 and 4.11).

Monitoring of SERAP projects

8. ***Helping applicants.*** Audit noted that the percentage of SERAP applications withdrawn was high and increasing, partly due to the applicants' misunderstanding of the assessment process and criteria. Furthermore, the approval rate of SERAP applications was low and declining. Unsuccessful applicants were only briefly informed of the reasons why their applications were not successful. They were not informed of their specific shortcomings or the comments made by the SERAP Project Assessment Panel (paras. 4.18 and 4.19).

9. ***Submission of Progress Reports and Final Reports.*** The ITC required the recipient companies to submit half-yearly Progress Reports and a Final Report after the completion of the project. For the period from 2008-09 to 2012-13, 287 Progress Reports and Final Reports were due for submission. Of these 287 Reports, 183 (64%) were submitted late. The average delay was 95 days (paras. 5.15 and 5.16).

10. ***Site visits.*** The ITC's Operation Manual requires that site visits to all the recipient companies should be conducted once every six months to assess their progress and check compliance with the terms in the Fund Agreement. The ITC had not issued detailed guidelines setting out the items to be checked or discussed during site visits, and the reporting requirements for documenting the visits (para. 5.19).

11. ***Projects not proceeded to Phase II.*** Prior to April 2008, each SERAP project had to be carried out in two phases. The two-phase system was changed to a single-phase one because the ITC considered that the system had drawbacks. For two-phase projects, the Fund Agreement stated that if the recipient company and the Government were unable to reach an agreement for Phase II by a prescribed date after the completion of Phase I, the company should refund to the Government all payments made to it unless it was the Government's discretion not to proceed with Phase II (i.e. the ITC rejected the application for Phase II). There were 72 such cases (which involved total SERAP fund of $23 million) and the ITC had not received such refund. Audit examined five cases and noted that the ITC had not taken adequate and timely follow-up action to recover SERAP fund made to the projects. These funds may have become irrecoverable due to the long lapse of time (paras. 5.25 to 5.28).

Audit recommendations

12. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Commissioner for Innovation and Technology should:**

Processing of ITSP applications

(a) **consider setting an overall passing mark on ITSP applications (para. 2.21(a));**

(b) **consider identifying the key assessment components, failure to achieve the passing marks of which would render an ITSP application not be supported (para. 2.21(b));**

(c) **review the procedures of processing ITSP applications with a view to finding out the reasons for the long processing time and identifying room for improvement (para. 2.27(a));**

(d) **promulgate guidelines on the valuation of in-kind sponsorship to ensure that the assessed value is well supported by evidence from independent parties (para. 2.33(a));**

Monitoring of ITSP projects

(e) **regularly remind the lead applicants of the need to comply with the submission requirements relating to Reports and audited accounts (para. 3.10(a));**

(f) **follow-up closely with the lead applicants of overdue cases with a view to expediting the submission of Reports/audited accounts (para. 3.10(b));**

Processing of SERAP applications

(g) **take necessary action to verify the eligibility of the applicants and information relating to the project teams (para. 4.15(a));**

(h) **ensure that the applicants state in the project budgets the minimum qualifications/experience of project staff to be hired (para. 4.15(b));**

(i) **issue guidelines to ITC staff and assessors of the SERAP Project Assessment Panel to facilitate their assessment on the reasonableness of the salary levels of the project staff stated in the project budgets (para. 4.15(c));**

(j) **consider publishing commonly made mistakes and shortcomings in the SERAP applications on the ITF website to help the prospective applicants (para. 4.20(c));**

Monitoring of SERAP projects

(k) **closely monitor the progress of the SERAP projects and take measures to ensure that recipient companies submit Progress Reports and Final Reports in a timely manner according to the reporting schedule set out in the Fund Agreement (para. 5.17(a)); and**

(l) **conduct a review of the 72 projects which did not proceed to Phase II to ascertain whether the SERAP fund disbursed to them should be recovered (para. 5.30(b)).**

Response from the Administration

13. The Commissioner for Innovation and Technology welcomes the value for money audit of the ITF and agrees with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 Innovation and technology are drivers of economic development and competitiveness. They help improve the efficiency and performance of enterprises, which in turn contribute to the sustainable growth of the economy. The Government attaches great importance to the development of innovation and technology in Hong Kong. The Chief Executive of the Hong Kong Special Administrative Region has stressed in his 2013 Policy Address that the Government will focus on the development of the highly competitive sectors of the innovation and technology industries in the light of Hong Kong's strengths.

1.3 Over the years, the Government has been promoting research and development (R&D) and technology upgrading by:

(a) the funding of innovation and technology upgrading in industry under the Innovation and Technology Fund (ITF);

(b) the funding of research in higher education institutions via the University Grants Committee and the Research Grants Council's block grants or earmarked/indicated grants;

(c) the provision of technological infrastructure (such as the Hong Kong Science Park and the three Industrial Estates); and

(d) the conduct of other support work (e.g. nurturing human resource development and strengthening Mainland and international collaboration in science and technology).

1.4 In January 2004, the Government established a high-level Steering Committee on Innovation and Technology chaired by the Financial Secretary with members from the relevant Government bureaux, academia, industry and R&D organisations. The Steering Committee is responsible for coordinating the formulation and implementation of innovation and technology policies, and ensuring greater synergy among different elements of the innovation and technology programmes. Its terms of reference include:

(a) advising on the formulation of policies to support the development of innovation and technology and the commercialisation of R&D deliverables;

(b) determining focuses and priorities;

(c) ensuring effective alignment, coordination and synergy among the stakeholders;

(d) reviewing, where necessary, the institutional arrangements for effective policy and programme implementation;

(e) advising on the allocation of resources among major elements of the innovation and technology programme to optimise their utilisation; and

(f) exploring means to attract investments from overseas in the technology sector.

Hong Kong's ranking in competitiveness and innovation

1.5 International organisations regularly assess and publish rankings on the competitiveness and innovation of economies in the world:

(a) in the 2013-14 Global Competitiveness Index published by the World Economic Forum, Hong Kong was ranked seventh among 148 economies worldwide; and

(b) in the 2013 Global Innovation Index published by INSEAD and its associates, Hong Kong was ranked seventh among 142 economies worldwide.

1.6 While Hong Kong achieved high rankings in the two indices, its rankings in the innovation and technology sub-components of the indices were modest. For example, Hong Kong was ranked 23rd in the innovation sub-component of the Global Competitiveness Index, behind Taiwan, Singapore and South Korea.

1.7 The ITF is an important Government scheme that provides financial support for R&D projects to enhance Hong Kong's innovation and technology development. By November 2013, it would have operated for 14 years.

Innovation and Technology Fund

Aim and funding

1.8 The ITF aims to provide funding support for projects undertaken by research institutes, local companies, universities, industry support organisations, etc. that contribute to innovation and technology upgrading in manufacturing and service industries, so as to increase productivity and enhance competitiveness. It was established as a statutory fund under section 29 of the Public Finance Ordinance (Cap. 2) by a resolution of the Legislative Council on 30 June 1999 (Note 1). In July 1999, the Finance Committee of the Legislative Council approved the Government's proposal to inject $5 billion into the ITF. In November 1999, the ITF was launched. Any unexpended balance of the ITF is invested with the Exchange Fund, with investment income credited to the ITF. As at 30 June 2013, the fund balance of the ITF was $2.2 billion. Up to 31 March 2013, the following revenue had been received and expenditure incurred by the ITF:

Note 1: *In September 1998, the First Report of the Commission on Innovation and Technology recommended the establishment of the ITF to underline the Government's commitment to its policy and strategy for promoting innovation and technology, and to provide a secure source of funding for their implementation. The Commission recommended that the ITF should be used to finance projects that contributed to innovation and technology upgrading in both the manufacturing and service industries. The Chief Executive accepted the Commission's recommendations and pledged in his 1998 Policy Address an injection of $5 billion into the ITF.*

Table 1

Revenue and expenditure of ITF
(1999-2000 to 2012-13)

Particulars			Amount ($ million)
(a)	Setting up of ITF in November 1999		5,000
(b)	Revenue		
	— Investment income received from the Exchange Fund	3,490	
	— Commercialisation income received from ITF projects	47	
	— Refund of grants from ITF projects	393	
			3,930
(c)	Expenditure		6,551
(d)	Closing balance as at 31 March 2013 ((a) + (b) – (c))		2,379

Source: Records of Treasury and Innovation and Technology Commission

Innovation and Technology Commission

1.9 The Financial Secretary is designated as the administrator of the ITF. He has delegated his power of fund administration to the Commissioner for Innovation and Technology of the Commerce and Economic Development Bureau. The Commissioner heads the Innovation and Technology Commission (ITC), which is a department under the Communications and Technology Branch of the Bureau. Apart from promoting R&D, providing infrastructural support to facilitate technological upgrading and development of the industries and support to the industries, the ITC is responsible for processing applications of R&D projects and other ancillary projects of the ITF, disbursing funds to successful applicants, and monitoring the progress and achievements of approved projects under the ITF. It also oversees the performance of the R&D centres (see para. 1.11). As at 30 June 2013, the ITC had a headcount of 233 comprising 190 civil service posts and 43 non-civil service contract posts. For 2012-13, $181 million was paid from the general revenue of the Government to finance the ITC's day-to-day operation.

ITF programmes

1.10 The ITF has four programmes:

(a) ***Innovation and Technology Support Programme (ITSP).*** The programme provides funding for applied R&D projects undertaken by R&D centres, designated local public research institutes (e.g. universities) and private sector companies;

(b) ***Small Entrepreneur Research Assistance Programme (SERAP).*** This programme provides dollar-for-dollar matching grant for small technology-based enterprises to undertake projects that have innovative and technological content and business potential;

(c) ***University-Industry Collaborative Programme.*** This programme provides funding to R&D projects undertaken by local universities in collaboration with private sector companies; and

(d) ***General Support Programme.*** This programme provides funding to support projects that contribute to fostering an innovation and technology culture in Hong Kong (e.g. conferences and exhibitions).

Table 2 shows the number of approved projects and funds of these four programmes. Up to 30 June 2013, the total approved amount for these four programmes was $7,510 million. Up to 31 March 2013, the actual expenditure was $6,551 million (see para. 1.8). The difference was mainly due to the fact that funds were disbursed to projects by instalments based on their progress.

Table 2

Approved funds and number of projects of the ITF programmes (30 June 2013)

ITF programme	Number of approved projects	Approved project funds	
		Amount ($ million)	Percentage
ITSP	1,434	6,334.2	84%
SERAP	373	427.8	6%
University-Industry Collaboration Programme	240	273.0	4%
General Support Programme	1,329	475.4	6%
Total	3,376	7,510.4	100%

Source: ITC records

R&D centres

1.11 In 2004 (five years after the establishment of the ITF), the Government reviewed the development of innovation and technology and considered that since R&D projects were mainly initiated by individual researchers, they were not conducive to building the necessary technology focus. It therefore proposed to identify technology areas where Hong Kong had comparative advantages and the potential for meeting industry and market needs, and to establish R&D centres to drive and coordinate R&D efforts and promote commercialisation of R&D results in the selected technology areas. Following the public consultation exercise in 2004, in early 2005, the Government introduced a new strategic framework which aimed at a more focused approach to promoting innovation and technology development in five technology areas:

(a) automotive parts and accessory systems;

(b) logistics and supply chain management enabling technologies;

(c) nanotechnology and advanced materials;

(d) textiles and clothing; and

(e) information and communications technologies (ICT).

1.12 To take forward the strategic framework, in June 2005, the Government obtained the Finance Committee's approval to establish five R&D centres to undertake R&D projects in the five technology focus areas. In April 2006, the centres were set up. They were:

(a) Nano and Advanced Materials Institute (NAMI);

(b) Automotive Parts and Accessory Systems R&D Centre (APAS);

(c) Hong Kong Research Institute of Textiles and Apparel (HKRITA);

(d) Hong Kong R&D Centre for Logistics and Supply Chain Management Enabling Technologies (LSCM); and

(e) R&D Centre for ICT which was subsumed under the Hong Kong Applied Science and Technology Research Institute (ASTRI — Note 2).

1.13 As at 30 June 2013, the five R&D centres had in aggregate a workforce of 760, comprising research and administrative staff. Each of the centres is headed by a full-time Chief Executive Officer (CEO). The centres are hosted by local universities/ASTRI/Hong Kong Productivity Council. Their operating costs and the R&D projects undertaken by them are funded by the ITF, except the operating costs of the R&D Centre for ICT, which was funded by recurrent subvention provided to ASTRI from the Government's general revenue. Table 3 shows the operating expenditure of the R&D centres and approved R&D project costs managed by them.

Note 2: *ASTRI is an applied research institute wholly owned by the Government and was set up as a limited company in 2000. The Government provides annual subvention from the general revenue to ASTRI. ASTRI's CEO is responsible for overseeing and managing the operation of the R&D centre for ICT.*

Table 3

Funding for R&D centres

R&D centre	Hosting organisation	Operating expenditure (2012-13)		Approved project amount (April 2006 to June 2013) ($ million)
		Amount ($ million)	Source of funding	
NAMI	A local university	38.1	ITF	361.3
APAS (Note 1)	Hong Kong Productivity Council	15.8	ITF	192.3
HKRITA	A local university	19.1	ITF	277.5
LSCM	Jointly hosted by three local universities	20.9	ITF	309.4
R&D Centre for ICT (Note 2)	ASTRI	130.2	General revenue	2,103.8
	Total	224.1		3,244.3

Source: ITC records

Note 1: APAS was initially set up as an independent legal entity. In November 2012, it merged with and became a division of the Hong Kong Productivity Council in order to encourage synergy between the Hong Kong Productivity Council and APAS, rationalise overlaps in functions and achieve higher cost-effectiveness. The centre will be funded by the ITF until March 2017.

Note 2: The role of the R&D Centre for ICT was taken up by ASTRI in April 2006. Since ASTRI was an applied research institute set up as a limited company wholly owned by the Government in 2000, the organisation and management structure was already in place. Unlike the other four R&D centres, which were newly formed as limited companies, the R&D Centre for ICT was subsumed as a unit within ASTRI. In this Audit Report, the R&D Centre for ICT is hereinafter referred to as ASTRI except otherwise stated.

1.14 Following the establishment of the five R&D centres in April 2006, the Government adopted a three-tier funding framework for ITSP projects as follows (see Table 4):

Table 4

Three-tier funding framework for ITSP projects

	Tier 1	Tier 2	Tier 3
Technology focus area	Five focus areas of R&D centres (see para. 1.11)	Other than the focus areas of R&D centres	
Type	(a) platform projects (Note 1) (b) collaborative projects (Note 2) (c) seed projects (Note 4)	(a) platform projects (Note 1) (b) collaborative projects (Note 2)	N/A (Note 3)
Undertaken by	R&D centres	Designated public research institutes	Designated public research institutes or private sector companies

Source: Audit analysis of ITC records

Note 1: Platform projects require industry sponsorship from at least two private sector companies covering at least 10% of the project cost. The sponsorship can either be in cash or in-kind or a combination of both. These projects aim to benefit the whole industry instead of a single company (a company may use the technology developed by the project by paying a licence fee). Intellectual property rights generated from the project are owned by the R&D centre or the designated public research institute.

Note 2: Collaborative projects require industry sponsorship of at least 50% of the total project cost (or at least 30% in the case of projects undertaken by the R&D centres). Depending on the percentage of sponsorship, the industry sponsor may be entitled to utilise the intellectual property rights generated exclusively for a defined period or may own the intellectual property rights.

Note 3: Tier 3 projects are exploratory and forward looking projects, and industry sponsorship is not mandatory. Tier 3 projects are not subdivided into other types.

Note 4: Seed projects are exploratory and forward looking projects similar to Tier 3 projects except that they fall within the focus areas of the R&D centres.

Audit review

1.15 The Audit Commission (Audit) has recently conducted a review of the ITF. The audit findings are contained in two separate Audit Reports:

(a) ITF: Overall management (Chapter 9 of the Director of Audit's Report No. 61); and

(b) ITF: Management of projects (the subject matter of this Chapter).

1.16 In this Chapter, Audit has selected two of the four ITF programmes, namely the ITSP and SERAP, for review. The focus of the review was on the management of the projects of the two programmes. These two programmes accounted for 90% of the cumulative approved ITF funds since the ITF's establishment (see Table 2 in para. 1.10).

1.17 This Chapter focuses on the following areas:

(a) processing of ITSP applications (PART 2);

(b) monitoring of ITSP projects (PART 3);

(c) processing of SERAP applications (PART 4); and

(d) monitoring of SERAP projects (PART 5).

1.18 Audit has found that there is room for improvement in the above areas and has made a number of recommendations to address the issues.

General response from the Administration

1.19 The Commissioner for Innovation and Technology welcomes the audit review of the ITF and agrees with the audit recommendations. She has said that the review can help improve the overall management and operational effectiveness of the ITF.

Acknowledgement

1.20 Audit would like to acknowledge with gratitude the full cooperation of the staff of the ITC and R&D centres during the course of the audit review.

PART 2: PROCESSING OF ITSP APPLICATIONS

2.1 This PART examines the issues relating to the processing of ITSP applications.

Background

2.2 According to the Government, the ITF aims to increase the added value, productivity and competitiveness of Hong Kong's economic activities. The Government hopes that, through the ITF, companies in Hong Kong could be encouraged and assisted to upgrade their technological level and introduce innovation to their businesses. The ITSP is the largest of the four ITF programmes. Up to June 2013, approved funding for ITSP projects had amounted to $6.3 billion. Over the three years ended 31 March 2013, ITF funds disbursed to ITSP projects amounted to $1,515 million.

2.3 ITSP supports midstream/downstream R&D projects undertaken mainly by R&D centres, universities, industry support organisations, professional bodies and trade and industry associations. ITSP projects within the technology focus areas of the R&D centres are monitored by the respective centres (i.e. Tier 1 projects), while other projects are overseen directly by the ITC (i.e. Tiers 2 and 3 projects). ITF funds disbursed to ITSP projects overseen by the R&D centres and ITC during the period from 2006-07 (the establishment of the R&D centres) to 2012-13 were $2,294 million and $1,025 million respectively.

2.4 There are four types of ITSP projects:

(a) ***Platform projects (see para. 1.14).*** Platform projects may be proposed by the R&D centres or local public research institutes such as universities. Project costs are funded by the ITF with a small amount of sponsorship from the industries. Research results of platform projects are owned by the applicants (R&D centres or local public research institutes). As such, more companies in the industries can apply for and make use of the research results (especially the small and medium enterprises which may not have financial resource to sponsor a collaborative project);

(b) ***Collaborative projects (see para. 1.14).*** Collaborative projects are generally proposed by the R&D centres or local public research institutes such as universities. The Government's share of project cost on these projects is the lowest among the different types of ITSP projects. These projects receive larger industry contributions and have a higher chance of successful commercialisation. However, benefits (such as intellectual property right) are mostly accrued to the sponsoring companies and not to the industries; and

(c) ***Seed projects and Tier 3 projects (see para. 1.14).*** These projects are exploratory and forward looking in nature to provide the foundation for future R&D projects. Seed projects are proposed by R&D centres and Tier 3 projects are proposed by local public research institutes/private sector companies. Project costs are almost fully funded by the ITF. Successful projects can attract industrial sponsors to, based on the research findings of the seed/Tier 3 projects, carry on further research under platform/collaborative/contract research projects (Note 3).

Since March 2011, applicants of completed ITF projects (not limited to ITSP projects) can also apply for support under the ITSP for the production of prototypes/samples and for the carrying out of trial schemes in the public sector to facilitate and promote the realisation and commercialisation of R&D results generated by ITF projects. These projects are referred as Public Sector Trial Scheme (PSTS) projects.

2.5 Table 5 shows the number of different types of projects undertaken by the R&D centres and those directly under the oversight of the ITC for the period from 2006-07 to 2012-13.

Note 3: *For contract research projects, the sponsor will fund the full project cost. This type of project is outside the scope of the ITF.*

Table 5

Projects undertaken by R&D centres and projects under direct oversight of ITC (2006-07 to 2012-13)

Type of projects	Number of projects						
	Undertaken by R&D centre						Under direct oversight of ITC
	APAS	ASTRI	HKRITA	LSCM	NAMI	Total	
Platform	33	125	65	34	27	284	168
Collaborative	9	17	7	5	29	67	22
Seed/Tier 3	13	117	—	1	26	157	362
PSTS	4	2	12	7	—	25	1
Total	59	261	84	47	82	533	553
Approved project costs ($ million)	178.0	2,026.2	260.5	309.4	358.9	3,133.0	1,036.4

Source: ITC and R&D centre records

Processing of applications

2.6 Every year, the R&D centres and the ITC invite applications for the funding of ITSP projects. The Government adopts a three-tier funding framework (see para. 1.14). There are different requirements pertaining to projects of Tiers 1, 2 and 3, as follows:

(a) for Tier 1 projects, the application has to fall within the technology focus areas of the five R&D centres. The application is submitted by the R&D centre as the lead applicant;

(b) for Tier 2 projects, the lead applicant has to be a designated local public research institute (e.g. a local university or the Hong Kong Productivity Council);

(c) for Tier 3 projects, the lead applicant has to be a designated local public research institute or a company incorporated under the Companies Ordinance (Cap. 32); and

(d) for collaborative projects (all collaborative projects are Tier 1 or Tier 2 projects), there has to be an industry co-applicant. The co-applicant is normally a company incorporated under the Companies Ordinance.

2.7 For each project, the applicant has to appoint a project coordinator to oversee the project, monitor its expenditure and ensure the proper usage of project funds in accordance with the approved budget and other guidelines and instructions set for the projects, liaise with and answer enquiries/requests raised by the ITC, and attend progress meetings on the project.

2.8 The ITC publishes on its website a set of ITSP Guidelines on the scope of funding, information to be provided (such as project details, expenditure and industry sponsorship) by the applicants, assessment framework, commercialisation plan and intellectual property rights and benefit sharing.

2.9 ITSP applications are subject to the following processing procedures (see Figure 1):

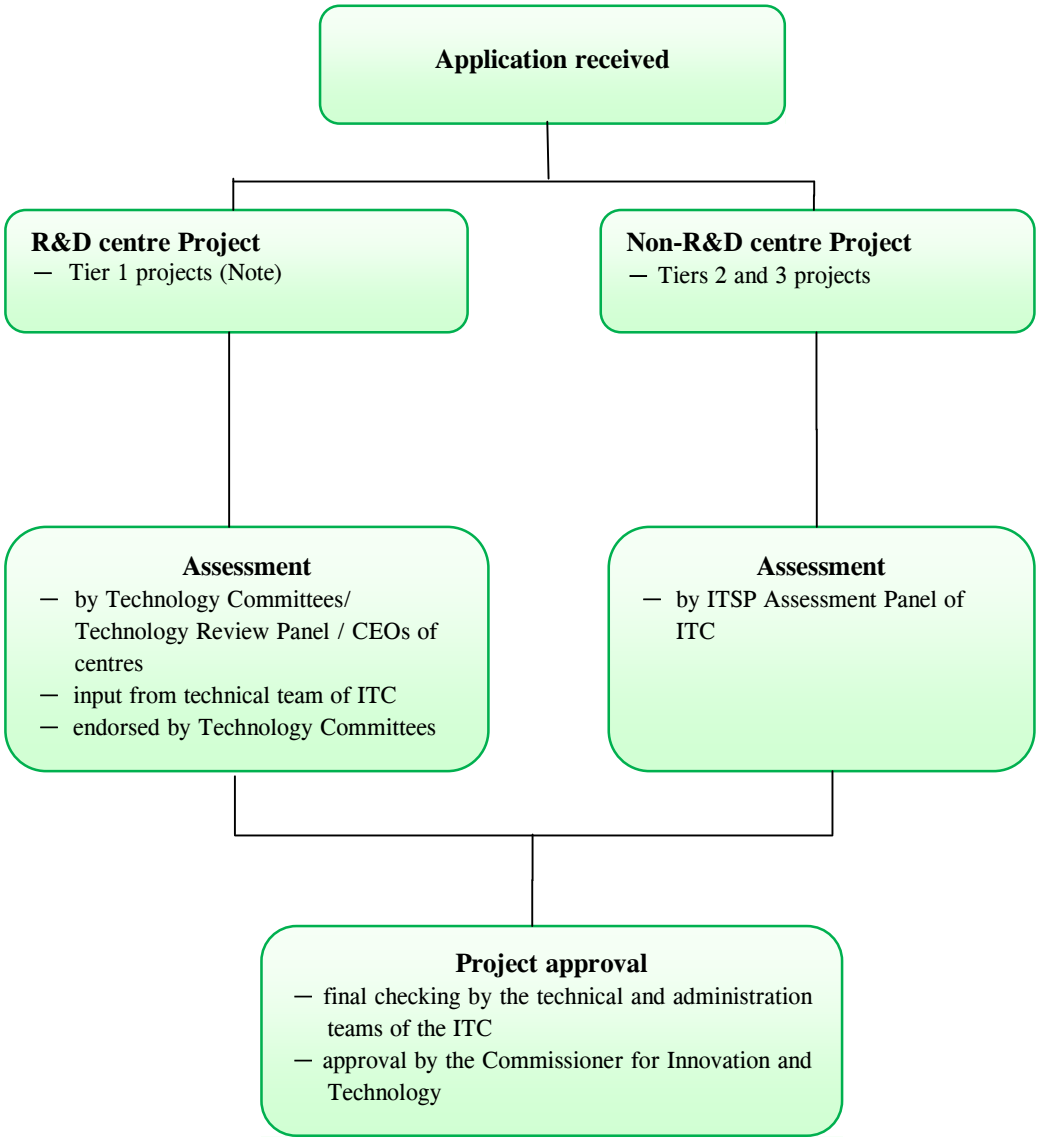
(a) for R&D centre projects, initial screening on project scope, R&D content, budget and implementation details by the centres;

(b) assessment by Technology Committees (or Technology Review Panel) of R&D centres or the ITSP Assessment Panel of the ITC, as appropriate. Members of these Committees/Panels include government officials and appointed members from industries and academic sector; and

(c) submitting the applications to the Commissioner for Innovation and Technology for approval.

Figure 1

Processing of ITSP applications



Source: *Audit analysis of ITC and R&D centre records*

Note: *From November 2012 onwards, application for projects of APAS have been assessed by the ITSP Assessment Panel of the ITC.*

Assessment mechanism and framework

2.10 An effective assessment mechanism and framework should be able to identify projects that will achieve the objectives of the ITSP and enhance transparency and accountability of the process of approving ITSP fund to selected project applications.

Assessment mechanism

2.11 The assessment mechanism for ITSP projects is as follows:

(a) Tier 1 projects (i.e. those of R&D centres):

(i) platform projects and collaborative projects are vetted by each centre's Technology Committee/Technology Review Panel and collaborative project assessment panel respectively (Note 4), of which the Commissioner for Innovation and Technology or her representative is a member; and

(ii) seed projects are vetted by the centre's CEO, after consulting internal technical staff and/or external experts, as appropriate;

(b) Tier 2 platform projects and Tier 3 projects are vetted by the ITSP Assessment Panel of the ITC; and

(c) Tier 2 collaborative projects are vetted by an internal assessment panel comprising technical staff of the ITC.

2.12 After vetting, all applications are subject to checking by the ITC's administrative team and technical team for completeness of information and compliance with the relevant ITC guidelines before submission to the Commissioner for Innovation and Technology for approval.

Note 4: *The collaborative project assessment panel normally comprises representatives of the centre's Technology Committee/Technology Review Panel, the centre's CEO or his representative, industry sponsors, ITC staff and representatives from implementing organisation (if applicable).*

Assessment Framework

2.13 The present Assessment Framework of the ITSP was promulgated by the ITC in March 2011. The Framework aims to achieve the following:

(a) encouraging and selecting projects with greater prospect of realisation/commercialisation;

(b) facilitating the trial of R&D outcomes (especially in the public sector), so that researchers and industry can gain actual experience to fine-tune their products, build up 'reference' for subsequent marketing, and bring about wider economic and social benefits to the community;

(c) motivating the private sector to invest more in R&D activities in Hong Kong; and

(d) enhancing cooperation among Government, industry, academia and research institutes.

2.14 Under the Assessment Framework, project applications are assessed under the following seven components (see Table 6):

Table 6

Assessment Framework of ITSP applications

Component	Example of criteria	Weighting	
		Tiers 1 & 2 platform and collaborative project	**Seed/Tier 3 project**
Innovation and technology component	• Potential for new technologies or enhancement to existing products	20%	36%
Technical capability	• Viability of technical proposal and competence of technical team	20%	32%
Financial considerations	• Proposed financial contribution to project cost	16%	8%
Realisation/ commercialisation	• Chance of realisation/ commercialisation	16%	4%
Relevance to government policies or in overall interest of the community	• Support important government initiatives • Great social benefit and upgrade of industry	12%	8%
Intellectual property rights and benefit sharing	• Patentable R&D result • Formula of benefit sharing	8%	4%
Management capability	• Support from university or research partners and capacity of the project team	8%	8%
	Total	100%	100%

Source: ITC records

Practices of R&D centres and ITC relating to passing mark

2.15 The ITC has not issued detailed guidelines on the assessment framework such as the awarding of marks and the passing marks for applications. As a result, different practices were adopted among the R&D centres and the ITC (see Table 7).

Table 7

Practices relating to passing marks adopted by R&D centres and the ITC

Passing mark	R&D centre	ITC
For the project as a whole	• NAMI: 50 marks or higher in general • HKRITA: 70 marks or higher in general (Note 1) • ASTRI: 50 to 55 marks • APAS: No (Note 2) • LSCM: No	No
For each assessment component	No	No

Source: *Audit analysis of ITC and R&D centre records*

Note 1: *HKRITA (the centre that set the highest passing mark) informed Audit that at a Technology Committee meeting held in June 2011, a representative of the ITC indicated that:*

(a) the ITC would normally support a proposal which scored 70 marks or over;

(b) more discussions would be required for a proposal that scored between 50 and 70; and

(c) a proposal with mark below 50 would not be supported.

Since then, the centre has set the passing mark at 70 and projects with scores less than 70 would not be supported.

Note 2: *In November 2012, APAS became a division of the Hong Kong Productivity Council and the assessment work of project applications was carried out by the ITSP Assessment Panel of the ITC.*

Overall passing mark for a project

2.16 Audit reviewed the practices of the ITC and the R&D centres relating to the setting of passing mark. Audit noted that:

(a) regarding Tier 1 projects, the ITC did not request the centres to set passing mark in assessing applications. Three R&D centres uses different passing mark (i.e. from 50 to 70), while one centre did not set a passing mark; and

(b) regarding Tiers 2 and 3 projects, the ITC did not set a passing mark.

2.17 In response to Audit's enquiry in June 2013, the ITC informed Audit that in assessing an application, it would not only focus on its scientific component, but would also consider its relevance to government policies or the overall interest of the community. The ITC also said that it had not set a passing mark for the total score in order to cater for special circumstances where a particular application might not be able to have high marks but was worth supporting.

Passing mark for individual assessment components

2.18 Audit noted that the ITC and the R&D centres did not set a passing mark for key assessment components failing which would lead to rejection of a project proposal. The ITC explained that, besides the need to cater for special circumstances where a particular application might not be able to score a high mark but worth supporting, there might be proposals which scored low marks in terms of technology and commercialisation, but had great benefits to the community or was relevant to government policies. The ITC was of the view that setting a passing mark for individual assessment component might result in such projects being rejected (Note 5).

Note 5: *The ITC cited an example where a project proposal involving technologies which are particularly beneficial to law enforcement but may not have immediate application in the commercial market. The ITC said that the proposal might thus score low in terms of technology component or plan for realisation/commercialisation, but has great benefits to the community or relevant to government policies (e.g. crime prevention).*

2.19 The objective of the ITF is to support R&D projects which are innovative and help upgrading the technology capabilities of the industry through commercialisaton and technology transfer of project deliverables. Therefore, assessment components like "innovation and technology component", "commercialisation" and "technical capability", which carry significant weightings in the assessment framework, are crucial to achieving the ITF objective. Inadequacy of a proposal in these key assessment components could not be compensated by high scores in other components. If a project applicant fails to meet a pre-set standard expressed as a passing mark in one or more key assessment components, the application should be rejected. The senior management of the R&D centres generally agreed that it was desirable to identify the key assessment components and set a passing mark for these components failing which a project should not be supported.

2.20 Assessments of the various ITSP projects are graded by different groups of technical experts. Audit considers it desirable to have a more structured and consistent numerical approach in grading projects in the Assessment Framework because:

(a) different R&D centres adopting their own standards would give applicants an impression of inconsistency in the administration of the ITSP funding mechanism;

(b) a more structured approach in marking (for example, suggesting the passing mark for each assessment component and an overall passing mark) would assist the different assessment panels and groups to achieve more consistency in their grading of projects; and

(c) having a passing mark can ensure a more objective measure in gauging the quality of applications submitted by different groups and in different years.

Audit recommendations

2.21 **Audit has *recommended* that the Commissioner for Innovation and Technology should, in collaboration with the R&D centres, consider:**

(a) **setting an overall passing mark on ITSP applications; and**

(b) **identifying the key assessment components, failure to achieve the passing marks of which would render an ITSP application not be supported.**

Response from the Administration

2.22 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) the ITC will work closely with the R&D centres and adopt an overall passing mark for ITSP applications. This passing mark will be applied not only to projects conducted by the R&D centres, but also to other ITSP projects; and

(b) the ITC will identify the key assessment components for which the passing marks must be achieved as suggested by Audit. For instance, the management capability of the project applicant will likely be one of them.

Processing time

2.23 Processing time is the number of calendar days counting from the date of receipt of an ITSP application to the date of approval of the application. The date of receipt is recorded in the Internet-based ITF project management system, namely the Innovation and Technology Commission Funding Administrative System (ITCFAS). Given the rapid development of innovation and technology and keen competition in the industry, there is a need to process ITSP applications swiftly so that promising projects could commence without unnecessary delay. Long processing time might dampen the interest of researchers, discourage support of the industry, delay the commercialisation of deliverables and, choke the advancement of innovation and technology.

Processing of ITSP applications

2.24 Audit analysed the processing time of ITSP projects approved in the period from January 2011 to June 2013 (see Table 8). Audit found that:

(a) ***Applications of Tier 1 projects.*** The average processing time taken by the five R&D centres ranged from 105 to 125 days (the overall average processing time was 122 days, representing 64% of the total processing time) before passing the applications received to the ITC for further processing. The average time taken by the ITC to process applications received from the five centres ranged from 46 to 100 days (the overall average processing time was 70 days, representing 36% of the total processing time). Thus, the total processing time for an application ranged from 158 to 222 days (overall average total processing time was 192 days); and

(b) ***Applications of Tier 2 projects and Tier 3 projects.*** The ITC took an average of 257 days to process a Tier 2 project application and 162 days to process a Tier 3 project application.

Table 8

Processing time of ITSP project applications
(January 2011 to June 2013)

R&D centre/ ITC	Number of applications	Average processing time (calendar day)					Average proposed project duration as stated in application	Average processing time as percentage of average project duration
		Centre		ITC		Total		
		Day (a)	Percentage of total processing time (b) = (a) ÷ (e) × 100%	Day (c)	Percentage of total processing time (d) = (c) ÷ (e) × 100%	Day (e) = (a) + (c)	Day (f)	(g) = (e) ÷ (f) × 100%
R&D centre (Tier 1 projects)								
APAS	9	105	66%	53	34%	158	614	26%
ASTRI	87	125	64%	71	36%	196	380	52%
HKRITA	25	122	55%	100	45%	222	592	38%
LSCM	14	121	65%	65	35%	186	501	37%
NAMI	25	115	71%	46	29%	161	536	30%
Overall	160	122	64%	70	36%	192	461	42%
ITC (Tiers 2 and 3 projects)								
Tier 2	59	N/A	N/A	257	100%	257	666	39%
Tier 3	128	N/A	N/A	162	100%	162	526	31%

Source: Audit analysis of ITC and R&D centre records

2.25 Compared with the average proposed project duration, the time used for processing a Tier 1 project application is equivalent to, on average, 42% of the proposed project duration. The corresponding percentages for Tier 2 and Tier 3 project applications were 39% and 31% respectively. Audit noted that the long processing time might arose because of long time taken in the following:

(a) negotiation of benefit sharing agreements with all parties concerned (for Tier 1 projects);

(b) negotiation with sponsors on the terms of sponsorship;

(c) waiting for response from project coordinators to questions raised; and

(d) arrangement of meetings with ITC personnel.

2.26 Long processing time of ITSP applications could affect the interest of project coordinators and sponsors who might withdraw the applications. During Audit's interviews with the senior management of the five R&D centres in July and August 2013, they expressed their general agreement that there was a need to shorten the processing time to a reasonable level to facilitate the early commencement of the R&D project work.

Audit recommendations

2.27 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **review the procedures of processing ITSP applications with a view to finding out the reasons for the long processing time and identifying room for improvement; and**

(b) **in the light of the results of the review, identify ways to streamline the application processing procedures.**

Response from the Administration

2.28 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that the ITC will, in collaboration with the R&D centres, review the application processing procedures and, where appropriate, identify ways to streamline them. However, in some cases, there may be factors that are beyond the control of the ITC, such as the time required for the project applicant to obtain formal sponsorship letters from its sponsors.

In-kind sponsorship

2.29 According to the ITSP Guidelines, industry sponsorship to platform projects and collaborative projects refers to sponsorship from companies which are not related to the lead applicants in terms of ownership or management and should in general be a user of the project deliverables (Note 6). The sponsorship can either be in cash or in-kind (such as equipment and consumables) or a combination of both. The ITSP Guidelines also state that in-kind sponsorship in the form of equipment or consumables will only be accepted if:

(a) it is essential to the project and is contributed specifically for the project; and

(b) documentary proof of the value of sponsorship has been provided to facilitate a fair assessment of the value of contribution.

2.30 For the period from 2006-07 to 2012-13, the R&D centres received $75.4 million in-kind sponsorship ($57.4 million for platform projects and $18 million for collaborative projects). Details are at Table 9.

Note 6: *Industry sponsorship requirement is not mandatory for seed projects and Tier 3 projects. However, applicants are encouraged to obtain sponsorship for such projects.*

Table 9

In-kind sponsorship for Tier 1 projects
(2006-07 to 2012-13)

	Platform project			Collaborative project		
R&D centre	**In-kind sponsorship (a) ($ million)**	**Total industry sponsorship (b) ($ million)**	**Percentage (c) = (a) ÷ (b) × 100%**	**In-kind sponsorship (d) ($ million)**	**Total industry sponsorship (e) ($ million)**	**Percentage (f) = (d) ÷ (e) × 100%**
APAS	0.2	16.0	1.3%	—	11.3	—
ASTRI	39.1	179.1	21.8%	15.2	41.5	36.6%
HKRITA	3.3	27.8	11.9%	—	4.7	—
LSCM	13.1	30.7	42.7%	0.5	4.2	11.9%
NAMI	1.7	11.8	14.4%	2.3	66.9	3.4%
Overall	57.4	265.4	21.6%	18.0	128.6	14.0%

Source: *Audit analysis of R&D centre records*

Remarks: *There were 284 platform projects, of which 119 (41.9%) had in-kind sponsorship. For collaborative projects, 13 (19.4%) of 67 projects had in-kind sponsorship.*

Valuation of in-kind sponsorship

2.31 The ITC has not promulgated detailed guidelines on valuation of in-kind sponsorship. Audit found that valuations were generally based on documents (e.g. invoices/estimation) provided by the sponsors and assessed by R&D centre staff and/or ITC staff based on their judgment. The supporting documents were mainly quotation from one single supplier and sometimes estimations made by the sponsor himself. Senior management of some R&D centres had also indicated that they had difficulties in ascertaining the fair value of in-kind sponsorship, and as such, they would prefer to receive cash sponsorship instead.

2.32 Industry sponsorship constitutes a large percentage of project costs for collaborative projects (at least 30% for Tier 1 projects and 50% for Tier 2 projects — see Note 2 to Table 4 in para. 1.14) and may affect the future benefit sharing (e.g. intellectual property rights) with the sponsors. The ITC needs to ensure that there is adequate proof of the value of in-kind sponsorship (e.g. professional valuation by independent third party) and consider whether a suitable ceiling on the percentage of in-kind sponsorship (of total project cost) should be set for collaborative projects.

Audit recommendations

2.33 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **promulgate guidelines on the valuation of in-kind sponsorship to ensure that the assessed value is well supported by evidence from independent parties; and**

(b) **consider setting a ceiling on the percentage of in-kind sponsorship for collaborative projects.**

Response from the Administration

2.34 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that the ITC notes Audit's suggestion that the assessed value should be supported by evidence from independent parties. The ITC will improve the current system in view of Audit's recommendations. However, there may be rare cases where a certain piece of equipment is unique in terms of say, intellectual property ownership or quality requirement, and hence there may be no comparable alternative or it may be difficult to obtain such evidence from an independent party.

PART 3: MONITORING OF ITSP PROJECTS

3.1 This PART examines the issues relating to the ITC's monitoring of ITSP projects.

Submission of reports and audited accounts

3.2 The ITC promulgated a set of ITSP Guidelines. Successful applicants need to comply with the requirements stipulated in the Guidelines. According to the Guidelines, the lead applicant is required to submit the following:

(a) ***Progress Reports and Final Report.*** According to the Fund Agreement, the lead applicant is required to submit to the ITC for approval a Progress Report half-yearly and a Final Report after the completion of the project. The Reports have to be prepared in a standard format and submitted through the ITCFAS. The Reports contain information on project progress, updates on project team and financial position of the project. Funds are disbursed if the ITC is satisfied with the progress and has approved the Progress Reports. The ITC has the right to defer payment until the milestones have been met, or terminate the project if there is a lack of material progress; and

(b) ***Annual and final audited accounts.*** The lead applicant is required to submit audited accounts annually and the final audited accounts after the completion of the project to the ITC for approval. The purpose of the submission is to facilitate the ITC in ensuring that ITSP funds are applied to the project in accordance with the approved budget and in compliance with the terms and conditions for the project. The accounts have to be audited by a certified public accountant (practising) registered under the Professional Accountants Ordinance (Cap. 50).

3.3 The ITCFAS maintains, for each project, information on the due dates and submission dates of the Reports and audited accounts.

Progress Reports and Final Reports

3.4 According to the Fund Agreement:

(a) Progress Reports have to be submitted within one month from the end of the period covered; and

(b) Final Report has to be submitted within two months after project completion.

3.5 Timely reporting of the project progress by the lead applicants and close monitoring by the ITC are important in ensuring that the projects are progressing as planned. Timely submission of Progress Reports allows the ITC to identify projects with technical or other issues so that it may provide additional assistance and feedbacks to them. Audit reviewed the timeliness of the submission of Progress Reports and Final Reports. Audit noted that a large proportion of the Reports were submitted late (see Tables 10 and 11).

Table 10

Late submission of Progress Reports
(April 2006 to June 2013)

	Number of Reports						
	Tier 1 project					Tier 2 project	Tier 3 project
	APAS	ASTRI	HKRITA	LSCM	NAMI		
Submitted on time	6 (6%)	28 (9%)	152 (82%)	6 (6%)	1 (1%)	155 (37%)	220 (44%)
Late by 1 to 30 days	16 (16%)	166 (54%)	25 (13%)	9 (8%)	34 (22%)	231 (54%)	264 (52%)
Late by 31 to 60 days	43 (42%)	75 (25%)	4 (2%)	18 (17%)	59 (39%)	28 (6%)	12 (2%)
Late by 61 to 90 days	22 (21%)	11 (4%)	3 (2%)	22 (21%)	24 (16%)	3 (1%)	5 (1%)
Late by >90 days	15 (15%)	24 (8%)	1 (1%)	51 (48%)	33 (22%)	7 (2%)	4 (1%)
Total	102	304	185	106	151	424	505
Average number of days of delay (Note)	63	39	21	94	77	20	13

Source: *Audit analysis of ITC records*

Note: *Reports submitted on time were excluded from the calculation.*

Remarks: *The number of Reports included those which were still outstanding as at 30 June 2013. For the outstanding Reports, the number of days of delay was counted from the due date to 30 June 2013.*

Table 11

Late submission of Final Reports
(April 2006 to June 2013)

	Number of Reports						
	Tier 1 project					Tier 2 project	Tier 3 project
	APAS	ASTRI	HKRITA	LSCM	NAMI		
Submitted on time	1 (2%)	2 (2%)	30 (59%)	—	2 (4%)	38 (32%)	93 (36%)
Late by 1 to 30 days	5 (10%)	50 (40%)	14 (27%)	1 (3%)	5 (11%)	49 (41%)	117 (45%)
Late by 31 to 60 days	8 (17%)	27 (22%)	1 (2%)	—	10 (21%)	9 (8%)	22 (8%)
Late by 61 to 90 days	2 (4%)	25 (20%)	2 (4%)	—	8 (17%)	7 (6%)	13 (5%)
Late by >90 days	32 (67%)	20 (16%)	4 (8%)	28 (97%)	22 (47%)	16 (13%)	16 (6%)
Total	48	124	51	29	47	119	261
Average number of days of delay (Note)	138	57	57	337	175	56	38

Source: *Audit analysis of ITC records*

Note: *Reports submitted on time were excluded from the calculation.*

Remarks: *The number of Reports included those which were still outstanding as at 30 June 2013. For the outstanding Reports, the number of days of delay was counted from the due date to 30 June 2013.*

3.6 Audit noted that large percentages of Progress Reports and Final Reports were submitted late or were still outstanding. For APAS and the LSCM, over 60% of the Final Reports were submitted more than three months after the due dates (i.e. five months after the project completion). Late submission of Progress Reports and Final Reports not only represented non-compliances of the Fund Agreements but also affected the efficiency and effectiveness of the ITC's work in monitoring the progress of the projects and ensuring that prescribed milestones were achieved in a timely manner.

Annual and final audited accounts

3.7 According to the Fund Agreement, fund recipients are required to submit:

(a) annual audited accounts within three month after the end of the financial year; and

(b) final audited accounts within three months after the project completion date.

3.8 Audit reviewed the submission of annual audited accounts and final audited accounts. Audit noted that large percentages of the accounts were submitted late (see Tables 12 and 13).

Table 12

Late submission of annual audited accounts
(April 2006 to June 2013)

	Number of accounts						
	Tier 1 project					Tier 2 project	Tier 3 project
	APAS	ASTRI	HKRITA	LSCM	NAMI		
Submitted on time	7 (27%)	1 (2%)	—	—	—	38 (32%)	11 (18%)
Late by 1 to 30 days	7 (27%)	—	—	—	—	25 (21%)	17 (28%)
Late by 31 to 60 days	1 (4%)	—	2 (5%)	—	2 (6%)	11 (9%)	10 (16%)
Late by 61 to 90 days	2 (8%)	—	2 (5%)	—	5 (15%)	14 (12%)	3 (5%)
Late by >90 days	9 (34%)	54 (98%)	40 (90%)	36 (100%)	26 (79%)	31 (26%)	20 (33%)
Total	26	55	44	36	33	119	61
Average number of days of delay (Note)	264	285	184	598	305	121	134

Source: *Audit analysis of ITC records*

Note: *Accounts submitted on time were excluded from the calculation.*

Remarks: *The number of accounts included those which were still outstanding as at 30 June 2013. For the outstanding accounts, the number of days of delay was counted from the due date to 30 June 2013.*

Table 13

Late submission of final audited accounts
(April 2006 to June 2013)

	Number of accounts						
	Tier 1 project					Tier 2 project	Tier 3 project
	APAS	ASTRI	HKRITA	LSCM	NAMI		
Submitted on time	8 (17%)	—	—	—	—	20 (17%)	72 (28%)
Late by 1 to 30 days	9 (19%)	1 (1%)	—	—	1 (2%)	26 (22%)	46 (18%)
Late by 31 to 60 days	3 (6%)	3 (2%)	3 (6%)	—	—	14 (12%)	31 (12%)
Late by 61 to 90 days	5 (10%)	3 (2%)	3 (6%)	—	1 (2%)	7 (6%)	26 (10%)
Late by >90 days	23 (48%)	114 (95%)	44 (88%)	29 (100%)	44 (96%)	51 (43%)	81 (32%)
Total	48	121	50	29	46	118	256
Average number of days of delay (Note)	227	240	193	515	315	174	136

Source: *Audit analysis of ITC records*

Note: *Accounts submitted on time were excluded from the calculation.*

Remarks: *The number of accounts included those which were still outstanding as at 30 June 2013. For the outstanding accounts, the number of days of delay was counted from the due date to 30 June 2013.*

3.9 Audit noted that late submission of the audited accounts to the ITC was common. Large percentages of the accounts were submitted three months after the due dates or were still outstanding. Late submissions of audited accounts were non-compliances with the Fund Agreements. They also affected the ITC's monitoring of project expenditure, and resulted in delays of the return of residual funds to the Government for financing new ITF projects.

Audit recommendations

3.10 **Audit has *recommended* that the Commissioner for Innovation and Technology should take action to ensure that the Progress Reports, Final Reports, annual audited accounts and final audited accounts of ITSP projects are submitted in a timely manner in accordance with the Fund Agreements, including:**

(a) **regularly reminding the lead applicants of the need to comply with the submission requirements relating to Reports and audited accounts;**

(b) **following-up closely with the lead applicants of overdue cases with a view to expediting the submission of Reports/audited accounts; and**

(c) **regularly generating management information (such as ageing analysis of overdue cases and list of projects with overdue submissions) to facilitate monitoring and follow-up work.**

Response from the Administration

3.11 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) the ITC is fully aware of the importance of the timely submission of outstanding Progress Reports, Final Reports and audited accounts of ITSP projects;

(b) the ITCFAS currently keeps track of all ongoing ITSP projects and will issue reminders automatically to the project coordinators on submission of outstanding Progress Reports, Final Reports and audited accounts of ITSP projects. The ITC is aware that the present ITCFAS is not sophisticated enough and it will enhance the system to facilitate better project monitoring and following-up of outstanding Reports; and

(c) the ITC will liaise with the senior management of the R&D centres and universities and solicit their assistance as fit to facilitate better monitoring of projects.

Project equipment management

Requirements stipulated in ITSP Guidelines

3.12 The ITSP Guidelines stipulate the following requirements regarding the acquisition and utilisation of project equipment:

(a) the lead applicant should critically examine how the equipment required for the project can be obtained in the most economical manner;

(b) existing equipment should first be made use of; and

(c) the lead applicant and project coordinator are encouraged to share the use of existing equipment within their organisations or with other organisations where possible (e.g. local universities).

3.13 Furthermore, for any equipment whose acquisition cost is $500,000 or above:

(a) the ITC can, where necessary, require the applicant to transfer the equipment to the Government or another party within a period of two years after project completion; and

(b) the lead applicant is required to seek prior consent from ITC for change in the equipment.

3.14 Upon project completion, the project coordinator has to submit a list of equipment procured to the ITC. The ITC will check the list against the Final Report and the audited accounts. For each item with acquisition cost of $500,000 or above, the ITC will publish the relevant information (such as product name, brand, model number, unit price, quantity and date of purchase) on the ITC's website (ITSP Equipment List). The purpose is to facilitate the identification and sharing of equipment amongst the R&D centres and the designated local public research institutes. Interested parties can search the website and approach the project coordinator concerned direct for exploring the use of an item of equipment for R&D work. As at July 2013, there were 152 such items with a total acquisition cost of $244 million.

ITSP Equipment List

3.15 Audit selected 25 Tier 1 projects (5 per R&D centre), 15 Tier 2 projects and 15 Tier 3 projects and cross-checked the equipment details (items each costing $500,000 or above) of the Final Reports/Asset Registers of the R&D centres to the ITSP Equipment List. Audit noted that the information on the ITSP Equipment List was inaccurate and incomplete (see Table 14).

Table 14

Inaccurate and incomplete information on ITSP Equipment List (30 June 2013)

Project	R&D centre/ITC	Inaccuracy and incompleteness
Tier 1	APAS	Two items of equipment with a total cost of $1.18 million were not shown on the ITSP Equipment List (Note 1).
	ASTRI	(a) Seven items of equipment/software with a total cost of $29,555 were incorrectly included in the ITSP Equipment List as $29.6 million; and (b) tools with a total cost of $667,316 were found in the ITSP Equipment List. However, ASTRI advised Audit that the license of the tools expired in December 2008.
	LSCM	The license of a software (costing $738,000) shown on the ITSP Equipment List had expired.
	NAMI	The information of two items of equipment costing $7.5 million and $1.7 million were submitted to the ITC by NAMI in February and March 2013 respectively but was not included in the ITSP Equipment List (Note 2).
Tier 2	ITC	Two items with a total cost of $2.1 million procured under two projects were not shown on the ITSP Equipment List.

Source: Audit analysis of ITC and R&D centre records

Note 1: In September 2013, the ITC informed Audit that the omissions were due to late submission of equipment lists by APAS.

Note 2: The ITC explained that it needed to reconcile the costs of these items with the relevant final audited accounts before the details of the equipment could be published. In this connection, Audit noted that the relevant projects were completed in August and December 2012 and the relevant final audited accounts should have been submitted to the ITC in November 2012 and March 2013 respectively. Up to the time of audit, the accounts had not been submitted to the ITC.

3.16 To ensure that designated local public research institutes and project applicants are aware of the existing items of equipment and can make use of them, the ITC needs to ensure the completeness and accuracy of the items on the ITSP Equipment List.

Equipment costing below $500,000

3.17 In addition to the 152 items of equipment each costing $500,000 or above, some 20,000 items each costing below $500,000 were acquired for ITSP projects. The total cost was $225 million. Details are as follows:

Table 15

Number and total cost of items of equipment with unit cost below $500,000 (30 June 2013)

Project	R&D centre/ITC	Number of items	Total cost ($ million)
Tier 1	APAS	56	4.0
	ASTRI	3,690	43.9
	HKRITA	902	12.7
	LSCM	2,379	22.9
	NAMI	309	7.5
Tier 2	ITC	8,485	68.8
Tier 3	ITC	3,790	65.6
	Total	19,611	225.4

Source: ITC and R&D centre records

3.18 Unlike equipment items costing $500,000 or above, the availability of these items were not made known to the public on the ITC website to facilitate interested parties and project applicants to identify and make use of them. Audit considers that there are merits in lowering the threshold of $500,000 with a view to avoiding duplicated purchases using ITF fund as far as possible.

Audit recommendations

3.19 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **strengthen the controls on the updating of the ITSP Equipment List to ensure that the information is correct and complete;**

(b) **regularly confirm and update the information on the ITSP Equipment List with the R&D centres and project coordinators; and**

(c) **consider lowering the cost threshold of items of equipment to a level below $500,000 for inclusion in the ITSP Equipment List.**

Response from the Administration

3.20 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) the ITC will review the current mechanism and strengthen control on the updating of the ITSP Equipment List with a view to ensuring its accuracy to better facilitate sharing of equipment; and

(b) the ITC will also review the current threshold of $500,000 for equipment to be included in the ITSP Equipment List.

Post-project evaluation

3.21 Upon completion of an ITSP project, the ITC requires the following documents to be submitted within six months:

(a) ***Post-project Completion Survey Questionnaire for Project Coordinator (Project Coordinator Questionnaire).*** The questionnaire is completed by the project coordinator. It contains 12 questions on technology achievement, commercialisation and adoption by industry;

(b) ***Post-project Completion Survey Questionnaire for Sponsor (Sponsor Questionnaire).*** The questionnaire is completed by the sponsors. It contains nine questions mainly on the usefulness of the project results to the company and the industry, adoption and impacts of the project results and plans on further development of the product/technology; and

(c) ***Project Evaluation Form (ITC Evaluation Form).*** It is completed by ITC staff on-line using the ITCFAS. The form contains eight questions by which the ITC assesses whether the project has achieved technology breakthrough, successful commercialisation and adoption by industry, and is successful and whether reassessment is required in future.

Project Coordinator and Sponsor Questionnaires

3.22 In July 2013, Audit examined five Tier 1 projects of each R&D centre and five Tiers 2 and 3 projects, and found that many questionnaires (particularly Sponsor Questionnaires) were missing in the project files. Details are shown at Table 16.

Table 16

Availability of Project Coordinator/Sponsor Questionnaires (July 2013)

Project	R&D centre/ ITC	Project Coordinator Questionnaire			Sponsor Questionnaire		
		Number required to be submitted	Percentage of submitted questionnaire available		Number required to be submitted	Percentage of submitted questionnaire available	
			at R&D centre	at ITC		at R&D centre	at ITC
Tier 1	HKRITA	5	80%	80%	16	63%	63%
	APAS	5	0%	0%	8	0%	0%
	LSCM	5	20%	20%	18	39%	39%
	ASTRI	5	40%	80%	5	40%	40%
	NAMI	5	0%	40%	5	0%	0%
Tiers 2 and 3	ITC	5	N/A	20%	8	N/A	0%

Source: Audit analysis of ITC and R&D centre records

3.23 Audit's examination revealed that:

(a) there was no evidence showing whether the missing questionnaires were misplaced or not submitted. In response to Audit's enquiry in July and August 2013, the R&D centres said that under the present arrangement, the project coordinators/sponsors sent the questionnaires directly to the ITC and they were not required to copy the questionnaires to the centres; and

(b) much of information required to be filled in the questionnaires were either left blank or filled in with just a "Yes" or "No" answer without further elaboration.

3.24 Audit noted that neither the R&D centres nor the ITC had followed up on the missing questionnaires or the missing information. The information in the questionnaires was essential for monitoring technology breakthroughs and achievements, usefulness of the technology to industries, potential for further investment and research, and successful commercialisation. For effective evaluation of the achievements of projects and to effectively gauge whether the projects are achieving technology breakthroughs or usefulness to industries, the ITC needs to ensure that the project coordinators and sponsors submitted duly completed questionnaires in a timely manner. The ITC should also review the desirability of copying all the questionnaires of Tier 1 projects it received to the R&D centres for their comments and evaluation. It should also devise a system to track the overall achievements of the ITF's funding support in such R&D work from year to year.

ITC Evaluation Form

3.25 The ITC Evaluation Forms are completed by ITC staff and are maintained in the ITCFAS. Audit analysed the Forms for 166 Tier 1 projects (including 20 seed projects), 105 Tier 2 projects and 162 Tier 3 projects. The results are shown in Table 17.

Table 17

Project assessment stated on ITC Evaluation Forms

Assessment item	Tier 1 projects		Tiers 2 and 3 projects	
	Yes (%)	No (%)	Yes (%)	No (%)
The project has been satisfactory completed	98	2	99	1
The project has achieved technology breakthrough	10	90	13	87
The project has achieved successful exploration of concept (applicable to seed/Tier 3 projects only)	20	80	83	17
The project has achieved successful commercialisation	17	83	20	80
The project has achieved adoption by industry	68	32	75	25
Comments and remarks provided	39	61	41	59
The project is successful	68	32	75	25
Reassessment is required in future	0	100	5	95

Source: *Audit analysis of ITC records*

Remarks: *In calculating the percentages, projects for which assessments were not provided or not applicable were excluded.*

3.26 The results of Audit analysis indicated that a large percentage of the ratings for some assessment items were not positive. For instance, of the 166 Tier 1 projects, 90% were regarded as having no technology breakthrough, 83% were regarded as not successful in commercialisation, and 80% of the seed/Tier 3 projects were regarded as not having achieved successful exploration of concept.

Similar results for technology breakthrough and commercialisation were also noted for Tiers 2 and 3 projects. Audit noted that the ITC's assessment results were not conveyed to the R&D centres or the project coordinators/sponsors for review or follow-up action. Audit also noted that the ITC did not analyse and track the statistics outlined in Table 17 from year to year to gauge the trend in success rates over time.

Post-project evaluation framework of R&D centres

3.27 The R&D centres have standing procedures for performing some post-project evaluation activities (such as carrying out customer satisfaction surveys). However, they have not established a comprehensive post-project evaluation framework. In response to Audit's enquiry in July 2013, the R&D centres informed Audit that they recognised the importance of a comprehensive post-project evaluation framework. Some centres planned to develop such a framework and some centres were developing such a framework.

Recent development

3.28 Since April 2013, the ITC has put on trial at R&D centres a revamped methodology for conducting post-project evaluation of ITSP projects. The ITC has not set a target date for the full implementation of the new methodology (see PART 2 of Chapter 9 of the Director of Audit's Report No. 61 "Innovation and Technology Fund: Overall management" for more details). Audit supports the ITC's initiative and considers that the ITC should, in the meantime, also strengthen the controls over the timely submission of duly completed questionnaires by project coordinators, sponsors and its staff.

Audit recommendations

3.29 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **ensure that the project coordinators and sponsors submit duly completed Project Coordinator Questionnaires and Sponsor Questionnaires respectively in a timely manner;**

(b) **consider the desirability of copying all the Questionnaires of Tier 1 projects the ITC received to the R&D centres for their comments and evaluation;**

(c) **consider providing the evaluation results in ITC Evaluation Forms to the R&D centres, project coordinators and sponsors, and take necessary follow-up action with them based on the evaluation results;**

(d) **in collaboration with the R&D centres, consider developing a comprehensive post-project evaluation framework for adoption by the R&D centres; and**

(e) **consider designing and implementing reporting system to analyse and track the success rates of the different types of projects over time.**

Response from the Administration

3.30 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) in the past, much emphasis was placed on the assessment of project applications and she agrees entirely that evaluation of completed projects is equally important. Hence, earlier this year, the ITC has, in consultation with the R&D centres, developed a more comprehensive/systematic post-project evaluation framework to better assess the results of completed ITSP projects as well as keep track of the progress of realisation and commercialisation of R&D results; and

(b) a trial run of the new evaluation framework among the R&D centres has just been completed. In the light of the outcome of this trial run as well as the latest audit recommendations, the ITC will further review the evaluation framework to see what further improvements should be made.

PART 4: PROCESSING OF SERAP APPLICATIONS

4.1 This PART examines the issues relating to the processing of applications of SERAP projects.

Background

4.2 SERAP is a technology entrepreneur fund with an aim to provide funding up to $6 million on a dollar-for-dollar matching basis to small, technology-based and entrepreneur-driven companies to undertake projects with innovative and technology component and a reasonable chance of successful development of a new product, process or service that can be brought to the market. From the inception of SERAP to 30 June 2013, 373 projects with a total funding of $427.8 million were approved.

4.3 The ITC accepts applications for SERAP funding throughout the year. Applicants have to submit their applications through the ITCFAS. The ITC has promulgated on its website details about SERAP, including the application procedures and the vetting mechanism, in the Guide to the Small Entrepreneur Research Assistance Programme (the SERAP Guide). The ITC has also issued an Operation Manual on the processing of SERAP applications and the monitoring of the SERAP projects. A flow chart of the processing of SERAP applications, monitoring of SERAP project progress and post-completion procedures is at Appendix A.

4.4 Upon receipt of an application, the ITC staff will arrange an interview with the applicant to discuss the project proposal, company and shareholding structure, and business portfolio of the applicant. The eligibility, processing procedures and vetting criteria will also be explained during the interview. After the interview, the ITC staff will conduct a preliminary assessment on the application using a marking scheme (Note 7) on four assessment criteria (see Table 18). Details about the assessment criteria are shown at Appendix B.

Note 7: *Prior to 1 April 2012, project proposals were assessed either as "pass" or "fail" on each vetting criterion without a marking scheme. The use of a marking scheme has been adopted by other ITF funding programmes since 2011 and was extended to SERAP in April 2012 following a review of SERAP in late 2011.*

Table 18

Assessment criteria for SERAP applications

Criterion	Full mark	Passing mark
Innovation and technology component	30	15
Commercial viability of the project	30	15
Team capability and commitment	30	15
Relevance to Government's policies or in overall interest of the community	10	5
Total	100	50

Source: ITC records

4.5 Based on the marks scored by the applications, the ITC will prepare a shortlist. Sometimes, the applicants may withdraw the application after meeting the ITC staff (see para. 4.19(a)). Therefore, the total number of applications, including shortlisted and non-shortlisted applications, submitted for the SERAP Project Assessment Panel's (Note 8) consideration is less than the total number of applications received by the ITC. Usually, a SERAP Project Assessment Panel meeting will be held every month. During the Panel meeting, the ITC's technical staff will discuss the applications with three to five assessors selected from relevant categories of expertise. For non-shortlisted applications, the ITC staff will inform the Panel the reasons for not shortlisting them. For each of the shortlisted applications, the panel will discuss with the applicant for about 30 minutes.

4.6 For each application, the SERAP Project Assessment Panel assigns marks to each of the four assessment criteria. The Panel will make recommendation to the ITC on whether funding support should be approved. Funding support will be recommended if the application has obtained passing marks on all the four assessment criteria.

Note 8: *The SERAP Project Assessment Panel, chaired by the Commissioner for Innovation and Technology or the Commissioner's representative, comprises independent assessors drawn from a pool of technologists, professionals, academics and venture capitalists.*

4.7 For projects which are recommended for funding support, the applicants may be required to revise the project proposals to take into account the SERAP Project Assessment Panel's comments on project scope, deliverables, budget and duration. The revised project proposals will be submitted to the Commissioner for Innovation and Technology for approval. For applications which are rejected, the ITC will notify the applicants the assessment results and the reasons of the Panel's decisions.

Checking of applications

Eligibility of applicants

4.8 A company is eligible to apply funding support from SERAP if:

(a) it is incorporated in Hong Kong under the Companies Ordinance;

(b) it has less than 100 employees in Hong Kong;

(c) it is not a large company (Note 9); and

(d) it is not a subsidiary of or significantly owned/controlled by a large company.

In order to minimise abuse, the applicant is required to declare in the application that the information provided is accurate. It has to submit copies of Business Registration and Certificate of Incorporation to the ITC to support that the company is incorporated in Hong Kong under the Companies Ordinance. For the other three eligibility criteria, the ITC relies on the information provided by the applicant in the

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Note 9: *Under SERAP, a large company generally means a company that meets one of the following criteria:*

(a) a publicly listed company;

(b) a positive cash flow generated from operating activities in the ordinary and usual course of business of at least $20 million in aggregate for the two most recent financial years; or

(c) has a market capitalisation (or company asset) of at least $100 million.

application without requiring the submission of supporting documents or carrying out verification.

Capability and commitment of project team

4.9 One of the assessment criteria is the project team's capability and commitment. Applicants are required to submit the curricula vitae of the key members of the project team showing their professional/academic qualifications and working experience. Copies of certificates of professional/academic qualifications are submitted. In some cases, copies of supporting documents for working experience (e.g. reference letters or work experience certificates) are also submitted. However, in respect of working experience, the ITC did not follow up with those applicants who did not submit supporting documents.

Project budget

4.10 An applicant is required to include the budget in the project proposal covering expenditure on manpower, equipment and other direct costs. In most cases, expenditure on manpower makes up a very large proportion of the total project expenditure. For the 26 projects approved in 2011-12 and 2012-13, the expenditure on manpower is, on average, 62% of the total project expenditure.

4.11 The ITC has not issued guidelines to its staff or assessors of the SERAP Project Assessment Panel on how the salary levels of project staff should be assessed. Audit's examination of the budgets of the 26 projects approved in 2011-12 and 2012-13 revealed that:

(a) there were large variations in the monthly salaries of similar proposed project posts. For example, for a post of Software Engineer in two projects, the salaries were $13,000 and $40,000 respectively. In both cases, only the main duties of the posts but not the minimum qualifications/experience required of the posts were stated in the project budgets;

(b) in some cases, the candidates for the project posts had already been selected before commencement of the projects and their curricula vitae were included in the applications; and

(c) in some other cases, the project posts were only stated as "to be hired" and the minimum qualifications/experience required of the posts were also stated in the budgets. However, some other "to be hired" posts were not provided with the minimum qualifications/experience required. After the approved projects had commenced, the ITC would require the recipient companies to forward copies of the employment contracts and the curricula vitae of the project staff employed to the ITC.

4.12 Salary levels of project staff are determined by the job nature of the posts and the required qualifications and working experience. Hence, for different projects, different salary levels are assigned to the posts with the same title. To enhance accountability and transparency in vetting project budgets, the ITC should require the applicant to state in the project budget the minimum qualifications/experience of project staff to be hired. It should also issue assessment guidelines setting out the yardsticks (e.g. the range of reasonable monthly salary levels of project staff) to facilitate the assessment of manpower cost in project budgets.

Past performance of applicants

4.13 To avoid double funding the same R&D project, the ITC required the applicant to state in the SERAP application form details of any previously related projects undertaken by the applicant and/or key project team members in the past five years and supported by the ITF. The applicant is not required to report other ITF funded projects if the projects have no relation to the current project applying for SERAP funding support.

4.14 Audit reviewed the information maintained in the ITCFAS and noted that there were 23 companies which received SERAP funding in more than one project. Audit's examination revealed that a recipient company who failed to comply with SERAP requirements in a previous ITF project submitted an application for a new project in June 2005 (see Case 1 in para. 5.27). As the two projects were not related, the company did not mention the previous project in the application form of the new project. The new project was approved by the ITC in September 2005 without taking into account the company's non-compliances in the previous project. Audit considers that the ITC needs to consider requiring applicants to disclose all their previous ITF projects in the new application irrespective of whether they are related projects. In vetting the applications, the applicants' past performance in

compliance with the funding requirements in the previous projects (e.g. timely submission of Progress/Final Reports and audited accounts — see paras. 5.15 and 5.16) should also be taken into account in vetting the applications.

Audit recommendations

4.15 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **take necessary action to verify the eligibility of the applicants and information relating to the project teams (e.g. their working experience);**

(b) **ensure that the applicants state in the project budgets the minimum qualifications/experience of project staff to be hired;**

(c) **issue guidelines to ITC staff and assessors of the SERAP Project Assessment Panel to facilitate their assessment on the reasonableness of the salary levels of the project staff stated in the project budgets; and**

(d) **require applicants to disclose in their applications all their previous ITF projects and take into account their past performance (such as compliance with the funding requirements) when vetting their applications.**

Response from the Administration

4.16 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) the ITC will take necessary action to verify the eligibility of applicants and information on the project teams (e.g. working experience). Apart from checking the records of the Companies Registry, the ITC will consider asking applicants to provide statutory declarations; and

(b) the ITC will devise and issue comprehensive guidelines to its staff and assessors and such guidelines will include measures to assess the reasonableness of the salary levels of the project staff stated in the project budgets.

Helping applicants

Success rate of applications

4.17 In late 2011, the ITC conducted focus group meetings with relevant stakeholders (including recipient companies, trade associations and assessors) to gauge their views on improving the operation of SERAP and encouraging more applications. In April 2012, the ITC introduced a number of enhancement measures, such as increasing the funding ceiling from $4 million to $6 million, adopting a marking scheme for project assessment and describing the vetting criteria in more details in the SERAP Guide (see Appendix B).

4.18 Subsequent to the enhancement measures implemented by the ITC, the number of applications increased by 39.5% from 76 in 2011-12 to 106 in 2012-13. However, Audit noted that the percentage of applications withdrawn increased from 37.6% in 2008-09 to 51.3% in 2011-12 as well (the withdrawal rate for 2012-13 could not be ascertained since the processing of applications received in 2012-13 had not yet been completed at the time of audit). Furthermore, the approval rate of the applications remained at a low level and was declining (28% in 2011-12 and 27% in 2012-13). The approval rate in 2012-13 was the lowest in the past five years from 2008-09 to 2012-13 (see Table 19).

Table 19

Number of SERAP applications withdrawn and approved (2008-09 to 2012-13)

Year	Received	Withdrawn	Vetted by SERAP Project Assessment Panel (Note 1) (a)	Approved (b)	Approval rate (c) = (b) ÷ (a) × 100%
2008-09	125	47	40	14	35%
2009-10	142	63	82	34	41%
2010-11	109	52	63	21	33%
2011-12	76	39	50	14	28%
2012-13	106	29 (Note 2)	44	12	27%
Overall	558	230	279	95	34%

Source: ITC records

Note 1: The number of applications vetted by the SERAP Project Assessment Panel in a financial year includes those received in the previous financial year as lead time is required to process the applications.

Note 2: The number of withdrawn applications for 2012-13 may increase as the processing of applications received in the year had not yet been completed at the time of this audit.

Room for improving success rate

4.19 Audit noted that:

(a) many applicants withdrew their applications before they were submitted to the SERAP Project Assessment Panel (see Table 19). According to the ITC, the high withdrawal rate was partly due to the applicants' misunderstanding of SERAP. Some of these applicants modified and re-submitted their applications after they had discussed with the ITC

during the interview. The ITC may help reduce the withdrawal rate by stepping up its publicity efforts and conducting briefing sessions to explain in more details the vetting procedures and criteria so that the applicants can have better understanding of SERAP; and

(b) unsuccessful applicants were only briefly informed of the reasons why their applications were not successful. For instance, applicants were informed that the SERAP Project Assessment Panel had reservations on the innovation and technology content and commercial viability of their projects. They were not informed of the specific shortcomings or the comments made by the Panel. In this connection, Audit noted that during the focus group meetings held in late 2011 (see para. 4.17), some SERAP applicants voiced their need of more explanations on their failure to pass individual assessment criteria. To enhance transparency and enable unsuccessful applicants to benefit from the experience of the SERAP Project Assessment Panel and improve their project proposals, the ITC should consider providing them the comments of the Assessment Panel on their applications. In addition, the ITC should also consider publishing commonly made mistakes and shortcomings in the SERAP applications on the ITF website to help the prospective applicants.

Audit recommendations

4.20 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **step up the publicity on SERAP with a view to helping prospective applicants to better understand SERAP. For instance, the ITC may organise briefing sessions to explain in more details the vetting procedures and criteria of SERAP;**

(b) **provide unsuccessful applicants with information on the comments of the SERAP Project Assessment Panel as far as practicable; and**

(c) **consider publishing commonly made mistakes and shortcomings in the SERAP applications on the ITF website to help the prospective applicants.**

Response from the Administration

4.21 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that the ITC will strengthen its existing publicity efforts on SERAP, including organising seminars and briefings for prospective applicants, publicity in the print media, etc.

SERAP Project Assessment Panel

Appointment of assessors

4.22 All applications are vetted by the SERAP Project Assessment Panel comprising assessors of various backgrounds including the business, industrial, academic and technology sectors. In the vetting of applications, usually three to five assessors will be invited to serve in each Panel meeting. The Panel will advise the ITC whether the applications should be approved. The term of appointment of assessors of the SERAP Project Assessment Panel is two calendar years. The number of assessors in the latest three terms was decreasing. The number decreased by 32% from 44 in the term 2009/10 to 30 in the term 2013/14 (see Table 20).

Table 20

Number of assessors on SERAP Project Assessment Panel (2009/10 to 2013/14)

2009/10 (Note 1)	2011/12 (Note 1)	2013/14 (Note 2)
44	34	30

Source: *ITC records*

Note 1: *Position as at the end of the term.*

Note 2: *Position as at 30 June 2013.*

4.23 According to the ITC, the number of assessors in the past years followed the trend of the number of applications received. However, Audit noted that following the SERAP enhancement measures introduced in April 2012 (see para. 4.17), the number of applications had increased from 91 in 2012 to 63 in the first half of 2013. The ITC needs to closely monitor the increase in the number of applications and consider appointing new assessors to the SERAP Project Assessment Panel with a view to ensuring that there will not be shortage of experts in any technology area. Furthermore, a larger pool of experts would enable the ITC to have greater flexibility in inviting assessors for assessing applications of different nature.

Panel service of assessors

4.24 According to the Government' relevant guidelines, the ITC will not re-appoint serving assessors whose length of panel service exceeds six years. To ensure that the SERAP Project Assessment Panel is most efficient and effective in assessing applications, the assessors should have the best mix of years of panel service experience. Ideally, one-third of the assessors should have four to six years of service, another one-third should have two to four years of service and the remaining one-third should be newly appointed. Table 21 shows the distribution of the years of panel service experience of assessors serving the current term of 2013/14.

Table 21

Years of panel service experience of assessors
(2013/14)

Projected years of panel service as at 31 December 2014	Number of assessors
5 to 6 years	13
3 to 4 years	1
2 years	16
Total	30

Source: Audit analysis of ITC records

4.25 Audit noted that of the 30 assessors serving in the current term 2013/14, 13 will have served the Panel for five or six years by December 2014 and hence would not normally be re-appointed in accordance with the Government's guidelines. Of the remaining 17 assessors who are eligible for re-appointment, 16 of them only have two years of panel service by December 2014. For the 2015/16 term, to maintain a membership size same as the current Assessment Panel, the ITC will need to appoint 13 new members. Hence, the great majority of the assessors of the next term 2015/16 will either have two years of service or none at all. The ITC needs to monitor the term of the assessors more closely to ensure that the years of panel service of the assessors in each term are more evenly spread.

Audit recommendations

4.26 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **closely monitor the increase in the number of SERAP applications and consider appointing new assessors to the SERAP Project Assessment Panel with a view to ensuring that there will not be shortage of experts in any technology area; and**

(b) **monitor the term of the assessors more closely to ensure that the years of panel service experience of the assessors are more evenly spread.**

Response from the Administration

4.27 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that the ITC will appoint assessors taking into account the caseload of SERAP applications and the need to maintain a good mix of experienced assessors and new blood in the pool, and sufficient number of assessors in individual technology areas.

PART 5: MONITORING OF SERAP PROJECTS

5.1 This PART examines the monitoring of SERAP projects by the ITC.

Background

5.2 For a project which is recommended by the SERAP Project Assessment Panel for funding support, the ITC will discuss with the applicant on the project budget and milestones, taking into account the Panel's comments on the project. The finalised project proposal will be submitted to the Commissioner for Innovation and Technology for approval. The recipient company of the approved project will sign a Fund Agreement with the Government.

5.3 Prior to April 2008, each SERAP project had to be carried out in two phases, with a maximum funding of $2 million on a dollar-for-dollar matching basis. Phase I was for trial purpose and should be completed within six months with a funding support of not more than $0.4 million. After successful completion of Phase I, the applicant needed to submit an application for Phase II, which had to be carried out within 18 months with a funding support of not more than $1.6 million. The two-phase system was changed to a single-phase system with a project period no longer than two years with effect from April 2008 as the ITC considered that there were drawbacks of having a two-phase system, such as difficulties in arbitrarily splitting a project into two phases, discontinuation of project work and cash flow problems for the applicants, and extra administrative work for both the ITC and the applicants to process two applications for one project.

Disbursement of fund

5.4 The recipient company is required to open a bank account for processing receipts and payments of the project. All project funds including the SERAP fund and the recipient company's matching contributions would be deposited into the account and payments applied to the project would be paid out from the account. SERAP fund is disbursed to the recipient company by quarterly instalments according to the estimated cash flow of the project as follows:

(a) the first instalment is disbursed upon confirmation of the recipient company's matching contribution and proof of project expenditure using the matching contribution;

(b) subsequent instalments are disbursed quarterly if:

(i) the project meets the prescribed milestones and the ITC is satisfied with its progress; and

(ii) there is evidence showing contribution of matching fund by the recipient company; and

(c) the last instalment is disbursed to settle any outstanding Government's contribution after the ITC has accepted the audited accounts and the Final Report of the project.

Monitoring of projects

5.5 The recipient company is required to keep a set of books of accounts and records for the project. After the completion or termination of the project, the recipient company has to submit to the ITC audited accounts of the project within three months (for a project with cost of $1 million or more) or one month (for a project with cost below $1 million) together with the auditor's opinion as to whether the company and the interim/final audited accounts of the project have complied with all the requirements of the Fund Agreement. Based on the audited accounts, the recipient company should return to the Government its pro rata share of all residual funds.

5.6 To enable the ITC to monitor the progress of projects against the milestones stated in the project proposals, recipient companies are required to submit Progress Reports and a statement of income and expenditure for the reporting period until project completion according to the reporting schedule in the Fund Agreement. Within two months from the project completion date, the recipient company is required to submit a Final Report, which covers the period from project commencement to project completion and includes a synopsis of the

project results (both technical and financial). The Final Report should set out clearly the deliverables, the competitive advantages gained as a commercial product and the marketing plan. The Progress Reports, the Final Report and the audited accounts are essential for the ITC to ensure that SERAP fund is used only on allowable items set out in the Fund Agreement.

5.7 The ITC conducts progress meetings or site visits to assess the progress of the projects. Prior to April 2012, site visits were conducted quarterly. Following the SERAP review in late 2011, site visits were conducted half-yearly to reduce disruptions to the companies and progress meetings were held at the ITC's office between two site visits to monitor the project progress. During the progress meeting or site visit, the ITC staff will check whether the technical milestones set out in the Fund Agreement have been completed satisfactorily.

Termination of projects

5.8 The ITC may terminate a project or suspend the SERAP fund at any time for reasons which include:

(a) lack of material progress;

(b) slim chance of completion in accordance with the Fund Agreement;

(c) the original objectives of the project are no longer relevant to the needs of the industry as a results of material change in the circumstances; and

(d) failure to produce evidence of the company's matching contributions or produce the required reports or accounts.

5.9 With prior approval of the Commissioner for Innovation and Technology, a recipient company may also terminate the project.

5.10 Irrespective of whether the project is terminated by the ITC or by the recipient company, the ITC has the right to demand full repayment of fund disbursed to the recipient company.

Information kept in ITCFAS

5.11 The ITCFAS maintains information on the project status. According to the ITCFAS, in the period from the inception of SERAP in November 1999 to March 2008, 272 two-phase projects were approved and from April 2008 to May 2013, 100 single-phase projects were approved. Of the 272 two-phase projects, 170 proceeded to Phase II. The remaining 102 projects did not proceed to Phase II either because the relevant Phase II applications were not approved by the ITC or the recipient companies of Phase I had not submitted applications for Phase II for various reasons. Table 22 is an analysis of the status of the 372 projects as at 30 June 2013 as recorded in the ITCFAS.

Table 22

Status of SERAP projects as recorded in ITCFAS
(30 June 2013)

Status	Number of two-phase projects	Number of single-phase projects	Total
Completed (Note)	249	74	323
Withdrawn/terminated	10	1	11
Ongoing	13	25	38
Total	272	100	372

Source: Audit analysis of ITC records

Note: The number of completed projects included those with Final Reports not yet submitted by the recipient companies and those with Final Reports submitted but not yet accepted by the ITC. It also included those projects which had completed Phase I (regardless of whether they proceeded to Phase II or not).

Follow-up action by ITC on long outstanding projects

5.12 Recipient companies are required to complete the projects within the timeframe agreed with the ITC. According to the ITCFAS, for the 38 projects recorded as ongoing as at 30 June 2013, 16 projects remained uncompleted after the scheduled completion dates. The average delay counting from the

scheduled completion date up to 30 June 2013 was 73.9 months, ranging from 4 to 122 months. Audit examination of five long outstanding projects revealed that the action taken by the ITC in following up long outstanding projects was not timely or adequate (see Table 23).

Table 23

ITC's follow-up action on long outstanding projects
(30 June 2013)

Project	Fund disbursed (Note) ($)	Follow-up action
1	200,750	The recipient company submitted the Phase I Report after the completion of the project in December 2004 as scheduled. However, the company did not submit the audited accounts and the application for the Phase II project. The ITC had not taken any follow-up action (such as issuing warning letters), except sending the regular reminders automatically generated by the ITCFAS to the company.
2	1,451,500 (339,859)	The scheduled project completion date was April 2008. The recipient company did not submit the Final Report and audited accounts. In May 2009, about one year after the due date, the ITC sent a letter to the company but no reply was received. The ITC conducted company searches in July 2009 and April 2010 and found that the company was reported as dormant since June 2009. The ITC did not take any further follow-up action, except sending the regular reminders automatically generated by the ITCFAS to the company. The company also did not respond to the ITC's letters requesting the company to make declaration on the amount of revenue generated and follow-on investments received on the project for recoupment purpose.

Table 23 (Cont'd)

Project	Fund disbursed (Note) ($)	Follow-up action
3	1,270,000 (400,000)	The scheduled project completion date was December 2003. The recipient company did not submit the Final Report and audited accounts. In September 2007, the ITC sent a letter to the company but no response was received. The recipient company submitted the Final Report and audited accounts in December 2011. In February 2012, the ITC asked the company to return the residual fund of $95,426 of the Phase I project but without success. Since then, the ITC had not taken any further follow-up action.
4	1,234,172 (400,000)	The project was suspended since 2004 and the final instalment was withheld. In December 2009, the recipient company was in the process of winding up. The ITC informed the liquidator in January 2010 that a SERAP fund of $1.63 million should be repaid to the Government. Since then, the ITC had not taken any further action for the repayment. The company was dissolved in July 2010.
5	1,599,993 (370,178)	The recipient company did not submit the Final Report and the audited accounts after the scheduled project completion date of February 2010. It did not respond to the ITC's repeated reminders (the latest one was an unsuccessful phone call made on 26 April 2013). The company also did not respond to the ITC's request to make declaration on the amount of revenue generated and follow-on investments received for recoupment purpose.

Source: *Audit analysis of ITC records*

Note: *Projects 2 to 5 were Phase II projects. For these projects, the figures in the bracket denote the net SERAP fund (i.e. disbursed fund less residual fund returned) of the related Phase I project. With effect from April 2008, the ITC did not disburse the last instalment (not less than 10% of Government's contribution) until the company had submitted all reports and audited accounts.*

Audit recommendation

5.13 **Audit has *recommended* that the Commissioner for Innovation and Technology should take timely and adequate follow-up action (such as issuing warning letters and in more serious cases taking legal action) on recipient companies of long outstanding projects which did not comply with the requirements of the Fund Agreement.**

Response from the Administration

5.14 The Commissioner for Innovation and Technology agrees with the audit recommendation. She has said that:

(a) the ITC will assess if there are reasonable explanations for the non-compliances and devise an appropriate way forward, e.g. demanding repayment, setting the timeframe for repayment, consulting the Department of Justice about the feasibility of instigating legal action and, in cases where recovery action is not warranted, seeking approval for write-off in accordance with prevailing government procedures. If deemed necessary after considering the cases, the ITC will also consult the Department of Justice for scope to improve the terms of the Fund Agreement to ensure that the Government's interests are protected; and

(b) in following up the cases, the ITC will adopt a balanced approach to adequately protect the interests of the Government on one hand, and act appropriately and sympathetically to the companies concerned on the other (if there are reasonable explanations or cases of hardship). As SERAP has been in place for over a decade, the ITC intends to comprehensively review it to see if it can suitably/adequately provide support to the industry in present-day circumstances, taking into account all factors including measures adopted to support innovation and technology in places outside Hong Kong.

Submission of Progress Reports and Final Reports

5.15 For monitoring the progress and ensuring the satisfactory completion of projects, the ITC requires the recipient companies to submit half-yearly Progress Reports and a Final Report after the completion of the project according to the reporting schedule as set out in the Fund Agreement. Audit noted that many recipient companies did not comply with the reporting requirements. For the period from 2008-09 to 2012-13, there were 287 Progress Reports and Final Reports due for submission. Of these 287 Reports, 183 (64%) were submitted late, and 18 (6%) were still outstanding as at 31 July 2013 (see Table 24).

Table 24

Late submission of Progress Reports and Final Reports (2008-09 to 2012-13)

Year	Number of Reports			
	Due for submission	Submitted on time	Submitted late	Outstanding as at 31 July 2013
2008-09	30	12 (40%)	14 (47%)	4 (13%)
2009-10	63	21 (33%)	37 (59%)	5 (8%)
2010-11	86	23 (27%)	61 (71%)	2 (2%)
2011-12	62	17 (28%)	41 (66%)	4 (6%)
2012-13	46	13 (28%)	30 (65%)	3 (7%)
Overall	287	86 (30%)	183 (64%)	18 (6%)

Source: Audit analysis of ITC records

5.16 Audit conducted an ageing analysis of the 183 Reports which were submitted late (see Table 25). The average delay was 95 days.

Table 25

Ageing analysis of late submission of Progress Reports and Final Reports (2008-09 to 2012-13)

Year	Number of Reports			
	Late by 1 to 30 days	Late by 31 to 90 days	Late by more than 90 days	Total
2008-09	7	2	5	14
2009-10	21	7	9	37
2010-11	30	17	14	61
2011-12	18	9	14	41
2012-13	16	2	12	30
Total	92	37	54	183

Source: Audit analysis of ITC records

Audit recommendations

5.17 **Audit has *recommended* the Commissioner for Innovation and Technology should:**

(a) **closely monitor the progress of the SERAP projects and take measures to ensure that recipient companies submit Progress Reports and Final Reports in a timely manner according to the reporting schedule set out in the Fund Agreement; and**

(b) **consider producing regular management information reports on the delay position of all projects and ensure that adequate and timely follow-up action is taken.**

Response from the Administration

5.18 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

(a) the ITC is fully aware of the importance of the timely submission of Progress Reports and Final Reports of SERAP projects; and

(b) the ITCFAS currently keeps track of all ongoing SERAP projects and will issue reminders automatically to the project coordinators of the recipient companies on submission of outstanding Progress Reports and Final Reports. The ITC is aware that the present ITCFAS is not sophisticated enough and as such it will enhance the system to facilitate better project monitoring and following-up of outstanding reports.

Site visits

5.19 According to the ITC's Operation Manual, the ITC conducts site visits to recipient companies once every six months until the completion of the projects to assess their progress and check compliance with the terms in the Fund Agreement. The key purpose of a site visit is for the ITC staff to check whether the technical milestones set out in the Fund Agreement had been completed satisfactorily. During the visit, the ITC staff would take the opportunity to see if the resources for the project (such as equipment and manpower) funded by SERAP were duly in use. Audit noted that there was room for improvement in conducting site visits as follows:

(a) ***Site visits not conducted as required.*** Audit reviewed the site visit records of ten selected projects and found that:

(i) for one project commenced in July 2010 and completed in March 2012, no documentary evidence was available showing that site visits had been conducted; and

(ii) for four projects, documentary evidence showed that site visits had been conducted less than the required frequency; and

(b) ***No detailed guidelines for site visit.*** Audit noted that the ITC had not issued detailed guidelines to its staff setting out the items to be checked or aspects to be discussed during site visits, and the reporting requirements for documenting the visits. A review of the site visit records of ten projects revealed that there were inconsistencies of checks performed. Apart from checking whether the technical milestones had been completed, for some projects ITC staff had not performed other monitoring checks such as:

(i) verifying the number and identities of the staff purportedly employed by the recipient companies under the funded projects; and

(ii) verifying the number and model of equipment purchased for the funded projects.

Audit recommendations

5.20 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **ensure that site visits are conducted for all SERAP projects once every six months as required by the Operation Manual; and**

(b) **draw up detailed guidelines setting out the items to be checked and aspects to be discussed during site visits, and the reporting requirements of site visit reports.**

Response from the Administration

5.21 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that the ITC will prepare new guidelines/site visit proforma to ensure that site visits are conducted in a timely and systematic manner. Furthermore, the ITC will conduct unscheduled site visits to enhance monitoring.

Disbursement of fund

5.22 According to the Fund Agreement, SERAP fund instalments are only disbursed to the recipient company after it has achieved the prescribed project milestones and the ITC has been satisfied with the progress. To receive fund disbursement, the recipient company has to submit a "Progress Report and Fund Disbursement Request" setting out the details of the project milestones met and achievements. Upon receipt of the Request, the ITC staff should either conduct site visit to the recipient company or review the Progress Report to ensure satisfactory completion of the project milestones. Audit reviewed the fund disbursement records of ten selected projects, which consists of 40 instalments (excluding 10 initial instalments at the commencement of the projects). Of the 40 instalments, Audit found that before disbursing 22 instalments, no site visits or progress meetings were conducted and there was no evidence (e.g. notes/comments and/or signature made by any officer) to show that the achievement of the technical milestones stated in the Progress Reports had been reviewed.

Audit recommendation

5.23 **Audit has *recommended* that the Commissioner for Innovation and Technology should, prior to the disbursement of SERAP fund, conduct site visits or review the Progress Reports to ensure that the prescribed milestones have been met and the ITC is satisfied with the progress.**

Response from the Administration

5.24 The Commissioner for Innovation and Technology agrees with the audit recommendation. She has said that the ITC will improve internal procedures to ensure that funds are disbursed on satisfactory completion of project milestones as evidenced by site visits or Progress Reports.

Projects not proceeded to Phase II

Large percentage of projects not proceeded to Phase II

5.25 Of the 272 two-phase projects, 102 (38%) did not proceed to Phase II. In response to Audit's enquiry, the ITC informed Audit in June 2013 that of these 102 projects:

(a) the recipient companies of 30 projects (which involved total SERAP fund of $10 million) had submitted applications for Phase II after the completion of Phase I. However, their applications were unsuccessful; and

(b) the recipient companies of the remaining 72 projects (which involved total SERAP fund of $23 million) had not submitted applications for Phase II due to various reasons such as:

  (i) there had been changes in the market conditions so that proceeding to Phase II would not be productive;

  (ii) the recipient companies ran into financial difficulties or had been dissolved; or

  (iii) the recipient companies did not respond to ITC's invitation to submit Phase II application.

Return SERAP fund to Government

5.26 According to the Phase I Fund Agreement, if the recipient company and the Government were unable to reach an agreement for Phase II by a prescribed date after the completion of Phase I, the company should refund to the Government all payments made to it unless it was the Government's discretion not to proceed with Phase II (i.e. the ITC rejected the application for Phase II).

5.27 To ascertain whether the ITC had taken adequate follow-up action to recover payments made for Phase I, Audit examined five projects which had completed Phase I but did not proceed to Phase II. Audit found that the ITC had not taken adequate and timely follow-up action to recover SERAP fund made to the projects. These funds will mostly likely be irrecoverable due to the long lapse of time. Details of three projects were given below (see Cases 1 to 3).

Case 1

1. SERAP fund of $400,000 was paid to the recipient company to carry out a Phase I project for a deliverable in the Mainland. The Phase I project was completed in June 2003 and a residual fund of $224,400 was returned to the Government in July 2004.

2. According to the Fund Agreement for Phase I, if the recipient company and the Government were unable to reach an agreement for the Phase II project by 9 August 2003, the company should refund all payments previously made to it. The company did not submit an application for the Phase II after the due date.

3. In July 2005, the company informed the ITC that it had modified the project plan. Instead of filing a registration of the product in the Mainland, the company had registered in Hong Kong a product containing the deliverable of the Phase I project. An amount of $120, being 5% of the sales proceed of the product, was paid to the ITC in accordance to the requirement of the Fund Agreement.

4. In September 2007, the ITC sent a letter to the company asking it whether it had any intention to submit a Phase II application. However, no reply was received from the company. According to the Fund Agreement, the Government has the right to demand refund of the balance of $175,480 (i.e. $400,000 – $224,400 – $120) from the company.

5. In the period from January 2010 to July 2012, the ITC received letters from the auditor of the company requesting the ITC to confirm that the above SERAP fund balance was due to the Government by the company.

Audit comments

6. Audit noted that the ITC had not taken any action to recover the SERAP fund from the recipient company. Audit also noted that the company submitted another application for a new project in June 2005. The ITC approved the application without taking into account the company's failure to submit a Phase II application for the previous project. For Phase I of this new project, SERAP fund of $234,000 was disbursed to the company. Application to proceed to Phase II was not approved and the company returned the residual fund of $80,000 to the Government. The ITC needs to follow up with the company.

Source: Audit analysis of ITC records

Case 2

1. After completion of the Phase I of the project (with SERAP fund of $280,000 disbursed) in June 2007, the recipient company submitted an application for Phase II in August 2007. In September 2007, the SERAP Project Assessment Panel recommended that approval be given to the application.

2. In January 2008, before the Phase II Fund Agreement was finalised, the company informed the ITC that it intended to withdraw the Phase II application as it might move to another country and dissolve the company in Hong Kong. A meeting was held between the ITC and the company in January 2008 and the ITC informed the company that it might need to repay the Phase I fund to the Government if it withdrew the Phase II application. After the meeting, the company sent a letter to the ITC advising that it would withdraw the application as it was unable to make the matching fund contribution.

3. In April 2008, the ITC requested the company to provide documentary evidence on its financial position. However, no reply was received from the company.

4. In January 2011, the ITC conducted a company search and found that the company was dissolved in May 2009. The ITC had not taken any further follow-up action since then.

Audit comments

5. Since the last follow-up action taken in April 2008, the ITC had not taken any follow-up action until January 2011. As the company was dissolved, it is unlikely that the Government can recover the SERAP fund.

Source: Audit analysis of ITC records

Case 3

1. In September 2006, an amount of $104,000, being the first instalment of an approved SERAP fund of $207,000, was disbursed to the recipient company to carry out a Phase I project. However, after the disbursement of the first instalment in September 2006, the ITC did not receive any information on project progress from the company. In February 2007, the ITC attempted to contact the company by phone but failed.

2. In January 2010, the ITC conducted a company search and found that the company was dissolved in January 2009. The ITC had not taken any follow-up action since then.

Audit comments

3. Over the years, the ITC had only attempted to contact the recipient company once by phone in February 2007 and no further follow-up action was taken until January 2010. As the company was dissolved, the chance of recovery of the SERAP fund is slim.

Source: Audit analysis of ITC records

5.28 In response to Audit's enquiry regarding the refund of payments in respect of Phase I projects which did not proceed to Phase II under the Phase I Fund Agreement (see para. 5.25), the ITC informed Audit in June 2013 that it did not have the refund information readily available because such information was not maintained in the ITCFAS. The ITC staff had to search the paper records kept in individual project files in order to ascertain the refund amounts. In July 2013, the ITC informed Audit that the Government had not received such refund of SERAP fund in respect of any of the 72 projects which did not proceed to Phase II. The total amount involved was $23 million.

5.29 Notwithstanding the Fund Agreement has provided for the Government's right to seek refund of Phase I payments from recipient companies who did not proceed to Phase II of their own accord, the ITC had not received refund from any of the 72 projects. While the ITC staff might have taken into account each case's circumstances in deciding whether to pursue a refund (e.g. some projects may not be able to proceed as planned due to changes in market conditions), Audit considers that the ITC needs to conduct a review of all the 72 projects which did not proceed

to Phase II to ascertain whether it is appropriate to recover the funds disbursed (Note 10). For cases where recovery action is warranted, the ITC should take prompt and effective action to recover payments. For cases where recovery action is considered inappropriate, proper approval (including approval for the write-off of the irrecoverable amount) should be obtained in accordance with the Financial and Accounting Regulations. Going forward, the ITC should also put in place an effective control mechanism with adequate management information for monitoring the projects, including the timely recovery of the SERAP fund.

Audit recommendations

5.30 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **put in place an effective mechanism with adequate management information for monitoring the projects, including the timely recovery of the SERAP fund;**

(b) **conduct a review of the 72 projects which did not proceed to Phase II to ascertain whether the SERAP fund disbursed to them should be recovered;**

(c) **in the light of the results of the review, take recovery action as required and as soon as possible; and**

(d) **if recovery action is not warranted, seek approval for the write-off of the irrecoverable amount in accordance with the Financial and Accounting Regulations.**

Response from the Administration

5.31 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that:

Note 10: *Audit noted that for 31 of these 72 projects, the recipient companies had been dissolved, involving SERAP fund of $9.4 million.*

(a) for outstanding cases, the ITC will assess if there are reasonable explanations and devise an appropriate way forward, e.g. demanding repayment, setting the timeframe for repayment, consulting the Department of Justice about the feasibility of instigating legal action and, in cases where recovery action is not warranted, seeking approval for write-off in accordance with prevailing government procedures. If deemed necessary after considering the cases, the ITC will also consult the Department of Justice for scope to improve the terms of the Fund Agreement to ensure that the Government's interests are protected;

(b) in following up the cases, the ITC will adopt a balanced approach to adequately protect the interests of Government on one hand, and act appropriately and sympathetically to the companies concerned on the other (if there are reasonable explanations or cases of hardship); and

(c) the 72 projects were under the previous SERAP system where projects must be split into two phases with a funding support of not more than $0.4 million for Phase I. In 2008, it was already recognised that there were drawbacks in such a system and the two-phase arrangement was discontinued. Despite this, the ITC entirely agrees to the importance of putting in place an effective mechanism with adequate management information for monitoring the projects, including the timely recovery of outstanding SERAP fund.

Termination of projects

5.32 A recipient company wishing to terminate the project has to seek approval of the Commissioner for Innovation and Technology. For such cases, the Government reserves the right to demand full repayment of SERAP fund disbursed. According to the project status recorded in the ITCFAS, up to 30 June 2013, 11 projects had been terminated or withdrawn before their completion (see Table 22 in para. 5.11). Three of them were terminated before SERAP fund was disbursed. One was actually a completed project incorrectly recorded as a terminated project. For the remaining seven terminated projects, net SERAP fund of $4 million had been disbursed (i.e. fund disbursed less residual fund returned). In four of the seven cases, no action had been taken by the ITC to follow up (either to recover or to write off) the fund disbursed. The results of Audit's examination of these seven projects are given in Table 26.

Table 26

Action of ITC to follow up terminated projects

Project	Net SERAP fund (Note) ($)	Action taken
1	1,070,000 (356,800)	In September 2001, the recipient company informed the ITC that its technical director would take sick leave for 6 to 12 months. Since then, nothing was heard from the company. The ITC had not taken any further follow-up action until July 2007 when it conducted a company search and found that the company was dissolved in January 2004. No record was available showing the approval for the termination.
2	1,471,125 (400,000)	The ITC's last contact with the company was in July 2005. No record was available showing the approval for the termination.
3	507,724 (387,800)	In March 2002, the recipient company submitted a request for termination. No record was available showing the approval for termination or follow-up of amount disbursed.
4	439,963 (326,000)	In March 2004, the recipient company submitted a request for termination. No record was available showing the approval for termination or follow-up of amount disbursed.
5	—	In July 2006, the recipient company submitted a request for termination. Fund disbursed was fully refunded in January 2007 in accordance with the Fund Agreement. No record was available showing the approval for termination.
6	339,478 (262,048)	The recipient company failed to meet the commercial milestone in the Fund Agreement. Approval was given by the Commissioner for Innovation and Technology in January 2005 to terminate the project.
7	223,818	In May 2003, the recipient company informed the ITC that it was in financial difficulty and the project team had been disbanded. In February 2004, approval was given for the termination of this project.
Total	4,052,108 (1,732,648)	

Source: *Audit analysis of ITC records*

Note: *Net SERAP fund refers to the amount disbursed less the amount returned to the ITC after project completion. Figures in bracket denote the net SERAP fund for Phase I of the project.*

Remarks: *For projects 1 to 4, no action had been taken by the ITC to follow up the fund disbursed.*

Audit recommendations

5.33 **Audit has *recommended* that the Commissioner for Innovation and Technology should:**

(a) **ensure that cases of project termination are properly approved;**

(b) **take follow-up action to recover SERAP fund disbursed to the recipient companies of terminated projects pursuant to the Fund Agreement; and**

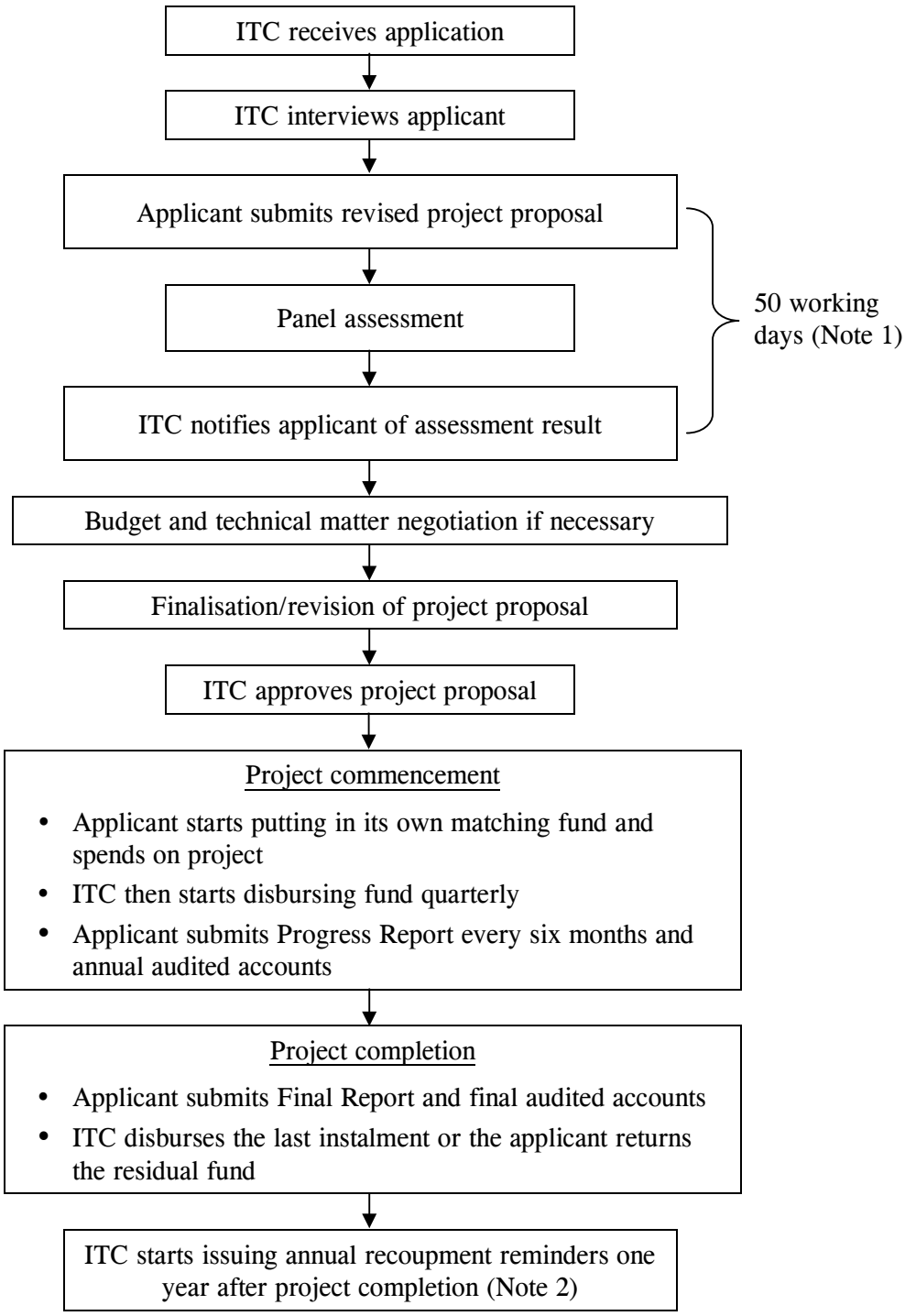
(c) **if recovery action is not warranted, seek approval for the write-off of the irrecoverable amount in accordance with the Financial and Accounting Regulations.**

Response from the Administration

5.34 The Commissioner for Innovation and Technology agrees with the audit recommendations. She has said that the ITC will improve internal procedures to ensure that project termination will be properly approved in future.

Appendix A
(para. 4.3 refers)

Workflow of SERAP's project management



Source: Audit's analysis of ITC records

Note 1: The ITC pledges to inform applicants the result of their applications within 50 working days after receipt of full information.

Note 2: For projects approved before 1 April 2012, the ITC issued recoupment reminders to recipient companies on a half-yearly basis.

Appendix B
(paras. 4.4 and 4.17 refer)

Major assessment criteria for SERAP applications

1. ***Innovation and technology component (30%)***

   (a) the applicant should articulate the technical challenges or the innovation involved in undertaking the R&D on the proposed technology; and

   (b) the technical approach to the problem, accuracy of technical data, reasonableness of the assumptions made.

2. ***Commercial viability of the project (30%)***

   (a) target customers, market niche of the product/service, competitors' analysis, pricing, track record of commercialising product/service and promotion of the proposed product/service/process.

3. ***Team capability and commitment (30%)***

   (a) whether the project coordinator and his team will be able to deliver the proposed project fully on the technical side;

   (b) whether the curricula vitae of members, the overall size of the team, the mix of staff at various levels, etc. are appropriate;

   (c) track records of the applicant in delivering its commitment for other Government funded projects; and

   (d) relevant information such as industry and academic awards won in the past and endorsement of outstanding experts in the field.

4. ***Relevance to Government's policies or in overall interest of the community (10%)***

   (a) technologies that dovetail Government's policies and bring benefit to the community at large.

Source: ITC records

Acronyms and abbreviations

APAS	Automotive Parts and Accessory Systems R&D Centre
ASTRI	Hong Kong Applied Science and Technology Research Institute
Audit	Audit Commission
CEO	Chief Executive Officer
HKRITA	Hong Kong Research Institute of Textiles and Apparel
ICT	Information and communications technologies
ITC	Innovation and Technology Commission
ITCFAS	Innovation and Technology Commission Funding Administrative System
ITF	Innovation and Technology Fund
ITSP	Innovation and Technology Support Programme
LSCM	Hong Kong R&D Centre for Logistics and Supply Chain Management Enabling Technologies
NAMI	Nano and Advanced Materials Institute
PSTS	Public Sector Trial Scheme
R&D	Research and development
SERAP	Small Entrepreneur Research Assistance Programme